

INFORMATION TECHNOLOGY PROFESSIONAL INDEMNITY CERTIFICATE

We have agreed to provide this insurance to **You** on the basis that the information provided in the **Proposal** was accurate and complete as at the date of commencement of the **Period of Insurance**. The **Proposal** shall be the basis of and incorporated into this contract of insurance.

In this Certificate:

- 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.

INSURING CLAUSES

In return for **Your** payment of the premium, **We** shall indemnify **You** as follows:

- 1 Civil liability**
for any amount up to the **Limit of Liability** in respect of **Loss** and **Defence costs and expenses** arising from a claim for any civil liability first made against **You** during the **Period of Insurance** and arising from the ordinary conduct of **Your Professional Business**.
- 2 Deliverables**
for any amount up to the **Limit of Liability** in respect of **Loss** and **Defence costs and expenses** arising from a claim made against **You** during the **Period of Insurance** and arising from the ordinary conduct of **Your Professional Business** for any breach of a contract for the design or supply of any **Deliverable** caused by:
 - 2.1** any failure of any **Deliverable** to conform with a specification contained in or incorporated into a written contract where **You** have warranted in that contract that the **Deliverable** will conform with that specification;
 - 2.2** any material defect in any **Deliverable**;
 - 2.3** any failure of a **Deliverable** to meet any term that is implied by statute as to quality, safety or fitness for purpose.
- 3 Virus**
for any amount up to the lesser of £500,000 or the **Limit of Liability** in the aggregate in respect of **Loss** and **Defence costs and expenses** arising from a claim for any civil liability first made against **You** during the **Period of Insurance** and arising from the ordinary conduct of **Your Professional Business** caused by any **Virus** unless the **Virus** was created by **You**.
- 4 Representation costs**
for any amount up to the **Limit of Liability** in respect of any legal costs incurred with **Our** prior consent to enable **You** to be represented at any inquiry or other type of

proceeding when the outcome of that inquiry or proceeding may, in **Our** sole opinion, be relevant to a claim in respect of which **You** may be entitled to an indemnity under this Certificate.

5 **Copyright infringement costs**

for any amount up to £25,000 in the aggregate during the **Period of Insurance** for any legal costs incurred with **Our** prior consent to enable **You** to pursue any claim for infringement of **Your** copyright first discovered during the **Period of Insurance**. **Our** consent will only be provided, for the purpose of this insuring clause, following receipt of an opinion from a barrister or solicitor specialising in copyright law and which confirms that **You** have reasonable prospects of success.

6 **Attendance expenses**

in the event that **We** require **You** or any **Employee** to attend any court or other judicial tribunal we shall pay **You** compensation at the following rates:

£500 per day for any current partner, member or director of **Your** firm
£250 per day for any other current **Employee**.

7 **Payment of fees owed to You**

in the event that a client of **Yours** refuses to pay **You** for work done (including amounts payable by **You** to any sub-contractor or supplier) in circumstances where **You** reasonably believe that the client may have grounds for dissatisfaction with the work and the client threatens to bring a claim against **You**, in respect of which **You** would be entitled to indemnity under this Certificate, for an amount greater than the amount of fees owed then, if **We** can settle the dispute with the client on the basis that **You** agree to waive all or part of the amounts due to **You** from that client, **We** will pay to **You**, up to the **Limit of Liability**, an amount equal to the waived unpaid amounts. In the event that

7.1 the client brings the threatened claim against **You** then the amount paid by **Us** in respect of the fees owed to **You** will be deducted from the **Limit of Liability**;

7.2 **You** subsequently recover the sum owed or any part of it **You** must repay to **Us** the amount recovered after deduction of the reasonable costs of recovery to the extent that those are not recovered from the client or any other person.

Provided always that, in the event that **We** have already paid the full amount of the **Limit of Liability We** shall not be obliged to provide **You** with any further indemnity under this Certificate.

EXCLUSIONS

We will not indemnify **You** against any claim :

- 1 **Employers liability**
arising from any breach of any duty that **You** may have to, or for any **Bodily Injury** suffered by, any **Employee** or any person applying to **You** for employment;
- 2 **Bodily injury**
arising from 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**;
- 3 **Property damage**
arising from 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**;
- 4 **Property/vehicles**
arising from **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;
- 5 **Manufacture and supply of goods**
arising from the manufacture, repair, alteration, installation, sale, supply or maintenance of any product or other item of goods whether by **You** or by any **Connected Person** or by any sub-contractor of **Yours** but this exclusion shall not apply if and to the extent that **You** are entitled to an indemnity under insuring clause 2 of this Certificate in respect of that claim;
- 6 **Construction**
arising from the manufacture, construction, erection, installation, repair, alteration or demolition of any building or other physical structure where **You** or any **Connected Person** or sub-contractor of **Yours** has entered into a contract to manufacture, construct, erect, install, repair, alter, or demolish any building or other physical structure;
- 7 **Pollution**
arising from or which is in any way related to or the consequence of any kind of seepage, pollution or contamination;
- 8 **Asbestos**
arising from or which is in any way related to or a consequence of the presence of asbestos in whatever form or amount;
- 9 **Toxic mould**
arising from or which is in any way related to or the consequence of

- 9.1 the actual, potential or threatened presence, growth, formation, release or dispersal of any kind of funghi, mould, spores or mycotoxins;
- 9.2 any action taken by any person to test for, detect, treat, monitor or remove any kind of funghi, mould, spores or mycotoxins;
- 10 **Radiation**
caused directly or indirectly or otherwise arising from
- 10.1 ionising radiation or contamination by radioactivity from any nuclear fuel or
- 10.2 the waste produced by the combustion or other treatment of nuclear fuel; or
- 10.3 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or any nuclear component of an explosive nuclear assembly;
- 11 **War**
Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power 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.;
- 12 **Terrorism**
arising directly or indirectly 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;
- 13 **The excess**
for an amount not exceeding the **Excess**;
- 14 **Retroactive date**
arising from an act or omission or other cause that occurred, or which is alleged to have occurred, before the Retroactive Date stated in the **Schedule**;
- 15 **Known before Period of Insurance**
arising out of any claim made or **Circumstance** known to **You** (or of which **You** ought to have been aware) before the date of commencement of the **Period of Insurance**;
- 16 **Notified after Period of Insurance**
notified to **Us** after the end of the **Period of Insurance**;
- 17 **Other insurance**
in respect of which **You** are entitled to claim an indemnity under any other policy of insurance provided that, if the **Limit of Liability** exceeds the amount of cover available under any other insurance then this exclusion will not apply save to the extent of the cover available under the other policy of insurance;
- 18 **Deliberate acts**
arising directly or indirectly from any deliberate or reckless act or omission committed or condoned by **You**;

- 19 **Dishonesty**
arising directly or indirectly from any malicious, dishonest or fraudulent act or failure to act
- 19.1 by any of **Your** current or past partners, directors or members; or
- 19.2 by any **Employee** (other than those who are or were partners, directors or members) occurring after such time as **You** had reasonable cause for suspicion that the **Employee** was engaged in or was contemplating engaging in any malicious, dishonest or fraudulent act or failure to act;
- 20 **Penalties, fines**
for the payment of any penalty, fine, exemplary, liquidated or other form of punitive or non-compensatory damages except in claims brought for defamation to the extent that such claims are otherwise covered by this Certificate;
- 21 **Connected person**
brought by any **Connected Person** whether alone or jointly with any other person or party except where the claim is brought against the **Connected Person** by an unconnected third party and where the claim would otherwise fall to be covered by this Certificate;
- 22 **Directors, trustees**
brought against **You** in the capacity of
- 22.1 a director or officer of **Your** firm or of any other company;
- 22.2 a trustee of any trust;
- 22.3 a director, officer or trustee of any pension fund or employee benefit scheme, whether for the benefit of **Your Employees** or any other entity;
- 23 **Onerous contracts**
arising directly or indirectly from any breach or alleged breach of contract and in respect of which
- 23.1 it is claimed that **Your** duty is more onerous than would be implied by common law or statute (unless and to the extent that **You** are entitled to an indemnity under insuring clause 2 of this Certificate in respect of that claim);
- 23.2 it is claimed 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;
- 23.3 **You** failed, before entering into the contract, to take reasonable steps to ensure that **You** could perform all of the obligations that **You** undertook to perform in accordance with the terms of that contract;
- 24 **Trading losses**
arising from any trading liability or trading loss incurred by **You** or by any **Connected Person**;
- 25 **Repayment of fees**
arising from any allegation that **You** have over-charged any client or for the return, reduction or repayment of any fees paid or payable to **You**;
- 26 **Geographical area**

arising from work carried out by **You** outside the Geographical Limits specified in the **Schedule**;

27 **Jurisdiction**

brought against **You**

27.1 other than within the Jurisdiction specified in the **Schedule**;

27.2 to enforce a judgment or finding of a court or other judicial tribunal based outside the Jurisdiction specified in the **Schedule**;

27.3 in which it is claimed that the law that applies is other than that of the Jurisdiction specified in the **Schedule**;

28 **Arbitrator**

which is to be determined by an arbitrator unless the arbitrator is independent of the parties to the claim and the arbitration is to be conducted in the United Kingdom of Great Britain and Northern Ireland;

29 **Adjudication**

which is to be determined by an adjudicator unless:

29.1 **You** give written notice to **Us** within 2 working days of

29.1.1 receipt of a notice that a dispute involving **You** is to be referred to an adjudicator; or

29.1.2 **Your** first becoming aware that another party intends to refer such a dispute to an adjudicator; and

29.2 the adjudicator is independent of the parties to the claim; and

29.3 the adjudication is to be conducted in the United Kingdom of Great Britain and Northern Ireland; and

29.4 the procedural timetable following the reference of the dispute to an adjudicator is no more onerous to **You** than that contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996.

30 **Virus**

arising directly or indirectly from or caused by any **Virus** except and to the extent that **You** are entitled to an indemnity under insuring clause 3;

31 **Intellectual property and confidentiality**

arising directly or indirectly from the actual or alleged infringement

31.1 of any patent;

31.2 of any other form of intellectual property or breach of any duty of confidentiality unless **You** can demonstrate, to **Our** satisfaction, that the infringement or breach was unintentional;

32 **Defamation**

for malicious falsehood or for libel or slander where **You** knew or ought reasonably to have known that the words spoken or the material published were defamatory;

33 **Obscenity**

arising directly or indirectly from any actual or alleged act, or the creation, publication or dissemination of any material, that is alleged to be obscene, pornographic or blasphemous;

- 34 **Loss of right of recovery**
in respect of which, as a consequence of any agreement that **You** may have entered into with a third party, **Your** rights of recovery against that third party have been restricted in any way;
- 35 **Financial advice**
arising directly or indirectly from **Your** providing, or failing to provide, investment or financial advice or arrangements of any kind;
- 36 **Tax**
for the payment of any kind of tax or arising directly or indirectly from the breach of any taxation legislation or regulation;
- 37 **Competition law**
arising directly or indirectly from any actual alleged breach of any law, rule or regulation relating to competition, anti-trust or restraint of trade;
- 38 **Negotiable instruments**
arising directly or indirectly from the possession, loss, damage or destruction of or any dealing with any form of bearer bond, coupons, bank or currency notes, share certificates, stamps or other negotiable paper or security;
- 39 **Joint ventures**
made against **You** or any joint venture or partnership between **Your** firm and any other entity or entities and arising out of the activities of any joint venture or partnership between **You** and any other entity or entities;
- 40 **Insolvency**
arising directly or indirectly from **Your** insolvency;
- 41 **Third Party Deliverables**
arising directly or indirectly from
41.1 a defect in any **Deliverables** supplied by a third party;
41.2 the failure of a third party to supply **Deliverables** or any service;
- 42 **Recall costs**
directly or indirectly for any costs and expenses incurred as a result of **Your** having to recall, replace, repair or provide a refund for any service or **Deliverables**.

CLAIMS CONDITIONS

Claims Conditions 1 - 3 below are conditions precedent to **Our** obligation to indemnify **You** under the terms of this Certificate. If, in relation to a particular claim or **Circumstance**, **You** fail to comply strictly with Claims Conditions 1 - 3 **We** may be entitled to decline to indemnify **You** against that claim or any claim that may arise from the **Circumstance**.

1 **Notification**

You must notify **Us** in writing as soon as possible (or, in the case of a claim to be referred to an adjudicator, within 2 working days) provided that **We** receive the notification before the end of the **Period of Insurance**, if you receive, discover or become aware of

- 1.1 any claim made against **You**;
- 1.2 any indication that someone intends to make a claim against **You**; or
- 1.3 a **Circumstance**.

If **You** give **Us** notice under paragraphs 1.2 and 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 **No admissions**

You must not admit liability for, or settle, any claim or **Circumstance** in respect of which **We** may indemnify **You** under this Certificate without **Our** prior written consent. **We** will not pay or be responsible for any **Defence costs and expenses** incurred, in relation to any claim or **Circumstance**, without **Our** prior written consent.

3 **Information and assistance**

Following notification under Claims Condition 1 above **You** must promptly provide **Us** with all documents and information that **We** may request and provide **Us** with all assistance and co-operation that **We** may require for the investigation, defence or settlement of the claim.

4 **Conduct**

Following notification **We** shall be entitled to take over the conduct of any claim and, at **Our** own expense, 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.

5 **Payment of Limit of Liability**

At any time:

- 5.1 **We** may pay to **You** an amount equal to the **Limit of Liability**; or
- 5.2 if **We** consider that a claim may be settled for 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 will have no further liability in respect of that claim. 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**.

GENERAL CONDITIONS

1 **Mitigation**

You must take all reasonable steps to avoid or reduce any **Loss** that might arise from any claim or **Circumstance**.

2 **Subrogation**

You must promptly provide **Us** with all documents and information that **We** may request and provide **Us** with all assistance and co-operation that **We** may require in order to try to obtain reimbursement from any third party of any **Loss** or **Defence costs and expenses** that **We** may have to pay in relation to any claim made against **You**.

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 **Dishonesty**

In the event that any claim or **Circumstance** notified to **Us** arises directly or indirectly from any malicious, dishonest or fraudulent act or omission then **You** must take all reasonable steps to

- 4.1 prevent any further **Loss** being incurred as a result of such malicious, dishonest or fraudulent act or omission; and
- 4.2 recover any **Loss** (and provide **Us** with all assistance required to do so) from any person or persons who committed or condoned such malicious, dishonest or fraudulent act or omission.

If **You** hold money that, but for the malicious, dishonest or fraudulent act or omission, would be due to any person involved then **We** shall be entitled to reduce the amount payable under this Certificate by an amount equal to the amount that **You** hold.

5 **Waiver of rights against employees**

We will not exercise any right that we may have to seek recovery of any **Loss** or **Defence costs and expenses** that **We** may have to pay from any former or present **Employee** unless **We** had to make that payment as a result of a malicious, dishonest or fraudulent act or omission committed by that **Employee** or where the **Employee** either conspired to commit or condoned that malicious, dishonest or fraudulent act or omission.

6 **Fraudulent claims**

If **You** make any claim under this Certificate knowing it to be false or fraudulent, whether as to the facts relied upon or as to the amount claimed or otherwise, this Certificate shall become void and **We** shall not be liable to provide **You** with any further cover under this Certificate.

- 7 **Cancellation**
We may cancel this Certificate by giving You 14 days notice in writing. If We exercise this right then the premium payable by You shall be received or retained by Us pro-rata to the period during which We have been on risk during the **Period of Insurance**.
- 8 **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.
- 9 **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.
- 10 **Waiver of right to avoid**
If We should be entitled to avoid this Certificate because You failed to disclose or misrepresented any fact or matter in the **Proposal** then We may, at Our sole discretion, decide to waive that right to avoid the Certificate on the basis that We shall not be liable to indemnify You against any claim that may arise directly or indirectly from the fact or matter that was not disclosed or was misrepresented.
- 11 **Governing law**
This Certificate is governed by English Law. In the event of any dispute between us as to the meaning, effect or validity of the 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.
- 12 **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 :
12.1 by You if it is sent to Your last known address or to Your broker; and
12.2 by Us if sent to Manchester Underwriting Management Limited, Centennium Court, East Street, Chesham HP5 1DG.
- 13 **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.
- 13.1 All claims and other enquiries shall be addressed to Manchester Underwriting Management Ltd, Centennium Court, East Street, Chesham HP5 1DG.
13.2 All complaints must be referred in the first instance to Manchester Underwriting Management Ltd, Centennium Court, East Street, Chesham

HP5 1DG and, if no satisfaction is obtained, complaints can be referred to the Complaints Department, Lloyd's, Policyholder and Market Assistance, One Lime Street, London EC3M 7HA

13.3 Manchester Underwriting Management Ltd acts as **Our** agent and not for **You**;

13.4 Lloyd's is regulated by the Financial Services Authority ('the FSA') whose address is 25 The North Colonnade, Canary Wharf, London E14 5HS

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

Connected Person

shall mean

- (a) any business owned controlled or managed, directly or indirectly, by **You**; or
- (b) any person or entity that owns, controls or manages, directly or indirectly, any part or the whole of **Your** firm

Circumstance shall mean

- (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 by **You** 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 fees 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 of **Employee of Yours**;
- (g) any circumstance, event or state of affairs which might reasonably be expected to lead to a claim against **You** or by **You** of a kind that may be covered under this Certificate

Defence costs and expenses

shall mean legal costs and expenses incurred by **You** or on **Your** behalf with **Our** prior 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.

Deliverables

shall mean any computer hardware, software, peripherals, firmware, cabling or electronic equipment

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

- (e) self-employed but 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 stated in the **Schedule** which shall be payable by **You** before **We** shall make any payment in respect of

- (a) **Loss** and/or **Defence costs and expenses** payable in respect of each and every claim or, in the event that any claim is brought by more than one claimant, to each claimant; or
- (b) any legal costs incurred with **Our** consent in accordance with insuring clauses 4 or 5; or
- (c) fees owed to **You** under insuring clause 7.

Limit of Liability

shall mean the amount stated in the **Schedule** and which shall be the maximum amount of **Our** liability to pay any **Loss** and **Defence costs and expenses** in respect of any one claim and in the aggregate for all such claims in the **Period of Insurance**

Loss

shall mean

- (a) in the context of any claim against which **You** may be entitled to an indemnity pursuant to insuring clause 1, 2 or 3, 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 other than by insuring clauses 1, 2 or 3

Period of Insurance

shall mean the period stated in the **Schedule**

Personal

Appointments shall mean any individual appointment of a personal nature and which arises out of **Your Professional Business** but not including any appointment as a director or officer of a company or as a trustee

Professional Business

shall mean the professional business of the kind ordinarily expected of a firm of the type specified in the **Schedule** together with any **personal appointments**

Proposal

shall mean the proposal form (whether in electronic or paper form) completed by **You** and received by **Us** together with any other information provided by **You** before the date of this Certificate

Schedule

shall mean the schedule attached to this Certificate

Us/Our/We

shall mean Lloyd's Syndicate 2001, the insurer under this Certificate

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**.