

Preamble

This is to certify that in accordance with the authorisation granted under the Contract (the number of which is specified in Item K of the Schedule) to the undersigned by certain Underwriters at Lloyd's whose names and the proportions underwritten by them which will be supplied on application can be ascertained by reference to the said Contract which bears the Seal of Lloyd's Signing Office (whom are hereinafter referred to as **We** and or **Us**) and in consideration of the premium specified herein **We** are hereby bound each for **Our** own part and not for another **Our** Executors and Administrators to insure in accordance with the terms and conditions contained herein or endorsed hereon

In witness whereof this Certificate has been signed 100% with **Us**

Effected through Arthur J. Gallagher (UK) Limited 9 Alie Street, London E1 8DE

The Certificate is made and accepted subject to all the provisions conditions warranties and exclusions set forth herein attached or endorsed all of which are to be considered

In consideration of the payment of the premium and in reliance on the statements made and information contained within the Proposal which shall form the basis of this Insurance and subject to the terms and conditions of this Certificate **We** agree as follows

1. Insuring Clauses

1.1 Cover for Individual Directors

- (a) **We** will pay the **Directors Loss and Professional Costs** arising from
- (i) a **Claim** including an **Employment Claim** made against him in his capacity as a **Director**
 - (ii) a **Claim** against him made by a shareholder derivatively on behalf of the **Company** in respect of the **Companys Loss** arising from **Contamination**
 - (iii) a **Claim** against him in his capacity as director officer trustee governor or equivalent of an **Outside Entity**
- (b) **We** will pay the **Directors Professional Costs** incurred in
- (i) preparing for responding to and attending an **HSE Investigation** or any other formal investigation conducted by a regulator government agency or official trade body into
 - (A) the affairs of the **Company** where the **Director** requires legal advice to protect his own position or
 - (B) his conduct as a **Director**
 - (ii) defending an **HSE Prosecution** or any other criminal prosecution or regulatory proceeding against him in his capacity as a **Director**
 - (iii) defending a **Claim** or a criminal prosecution or regulatory proceeding against him in his capacity as a **Director** that arises out of **Contamination**
 - (iv) dealing with an any request for his extradition and any subsequent proceedings under the provisions of the Extradition Act 2003 or other equivalent legislation in the European Union

1.2 Reimbursement to the Company for sums paid to Directors

We will pay to the **Company** any sums that it has paid to the **Director** by way of an indemnity or advancement in relation to the **Directors Loss** or **Professional Costs** covered under insuring clause 1.1

1.3 Cover for the Company

- (a) **We** will pay the **Companys Loss** and **Professional Costs** arising from an **Employment Claim** against it
- (b) **We** will indemnify the **Company** in respect of its loss of money or property resulting from one or more proven fraudulent or dishonest acts committed by an employee during the course of his employment provided that they were committed with the manifest intent to cause the **Company** to sustain such loss and which results in financial benefit other than remuneration for the employee or any other person or entity intended by the employee to receive such benefit **Our** total aggregate liability under this insuring clause shall be GBP50 000 and **Our** payments shall be treated as **Loss**
- (c) **We** will pay the **Companys Professional Costs** incurred in
- (i) defending a **Claim** against it brought by one of its suppliers for breach of written contract or written agreement
 - (ii) its representation at an **HSE Investigation** or any other formal investigation (but not a risk assessment) by a regulator government agency or official trade body into the affairs of the **Company**
 - (iii) defending it in an **HSE Prosecution** or proceedings under the Corporate Manslaughter and Corporate Homicide Act 2007
 - (iv) defending a **Claim** or a criminal prosecution or regulatory proceeding against it that arises out of **Contamination**
 - (v) defending a **Claim** by a third party to enforce a written contract or a written agreement entered into with another person fraudulently representing themselves as a **Director** on behalf of the **Company**

- (vi) defending a **Claim** by a third party to enforce a written contract or a written agreement entered into with another person fraudulently representing themselves as a **Director** on behalf of the **Company**

2. Extensions

2.1 Extra Protection for Non-Executives

When the **Directors Limit of Indemnity** is exhausted by payments made under this Certificate **We** agree to provide an indemnity under insuring clause 1.1 of the Certificate to the **Non-Executive Directors** up to the separate **Non-Executive Extra Limit of Indemnity** provided that

- (a) the relevant limits of liability of all policies or certificates operating in excess of this Certificate are also exhausted and
- (b) the **Company** and **Outside Entity** are unable to provide an indemnity either by reason of applicable law or their financial insolvency

2.2 Extended Periods of Cover - For Retired Directors (Bi-lateral)

In the event this Certificate is not renewed and not replaced with similar cover for the benefit of the **Retired Director** then the **Retired Director** shall automatically be entitled to an **Extended Period of Cover** of six years at no additional premium **We** shall have no liability arising from **Wrongful Acts** committed after the date on which the **Director** became a **Retired Director**

2.3 Extended Periods of Cover - For Directors and the Company (Bi-lateral)

In the event this Certificate is not renewed and not replaced with similar cover the **Company** may purchase on its and the **Directors** behalf an **Extended Period of Cover** for the period and additional premium stated in Item F of the **Schedule** Unless otherwise agreed this right is not exercisable after or alternatively the **Extended Period of Cover** shall lapse upon a **Change in Control** or the insolvency of the **Company** **We** shall have no liability arising from **Wrongful Acts** committed after the date of non-renewal or non replacement of this Certificate

2.4 Special Costs Cover

We will pay the **Professional Costs** incurred at **Our** request by the **Director** or **Company** in the investigation of any circumstance notified to **Us** in accordance with condition 6.2

Where a **Director** or the **Company** incurs **Professional Costs** but cannot reasonably obtain **Our** prior written consent because of the urgency of the matter then **We** will be deemed to consent to and pay those costs up to an aggregate amount of GBP50 000 provided that the **Director** or **Company** would otherwise be entitled to an indemnity for those costs under this Certificate

2.5 New Subsidiaries

Cover under this Certificate is extended to any **Subsidiary** and its directors domiciled in the European Union which the **Company** acquires or creates after the inception of this Certificate but only in respect of **Wrongful Acts** committed after the date of its acquisition or creation

2.6 Protection for Spouses and Estates

We will indemnify

- (a) the **Directors** lawful spouse (which will include civil partnerships that are recognised by law in their country of domicile) in relation to enforcement proceedings brought against joint property held or owned by or on behalf of the spouse to enforce a court judgment against the **Director** that would otherwise be insured under this Certificate
- (b) the estate, heirs and legal representatives of a **Director** in the event of his death incapacity or bankruptcy but only in respect of a **Claim** that would otherwise be covered under this Certificate

3. Retention

We shall only be liable to make a payment to the **Company** for **Loss** or **Professional Costs** in excess of the retention amount specified in Item G of the **Schedule** plus any unpaid premium This retention shall apply once only to all **Loss** or **Professional Costs** that arise out of single **Wrongful Act** or a series of related **Wrongful Acts** or **Wrongful Acts** which are otherwise causally connected

4. Limit Of Indemnity

4.1 Each and every payment in respect of insuring clauses 1.1 and 1.2 (or any endorsements to them) shall erode the **Directors Limit of Indemnity** Once the **Directors Limit of Indemnity** is reduced to nil **We** shall have no further liability under those insuring clauses unless extension 2.1 Extra Protection for **Non-Executives** applies

4.2 In the event that extension 2.1 applies then each and every further payment to the **Non-Executive Directors** shall erode the **Non-Executive Extra Limit of Indemnity** and once that is reduced to nil **We** shall have no further liability to the **Non-Executive Directors**

4.3 Each and every payment in respect of insuring clause 1.3 (or any endorsements to it) shall erode the **Companys Limit of Indemnity** Once the **Companys Limit of Indemnity** is reduced to nil **We** shall have no further liability to the **Company**

4.4 **Our** liability to the **Company** under insuring clause 1.3(a) arising from all **Employment Claims** in the aggregate shall be limited to the sub-limit of indemnity stated in Item G of the **Schedule**

4.5 Where any insuring clauses are stated to be subject to a sub-limit of liability then any such sub-limits are themselves aggregate sub-limits and shall form part of (and not in addition to) the **Directors Limit of Indemnity** or the **Company's Limit of Indemnity** as the case may be. All payments shall erode the relevant sub-limit of liability and once it is eroded to nil **We** shall have no further liability under the relevant insuring clause.

5. Exclusions

We shall not have any liability under this Certificate (including any endorsements) arising directly or indirectly out of

5.1 any **Claim** or circumstance which may give rise to a liability under this Certificate and which **Claim** or circumstance was known to the **Director** or the **Company** prior to the **Period of Insurance**. For the avoidance of doubt this exclusion applies only to the **Director** or **Company** that had the requisite knowledge and further it applies to that **Director** or **Company** notwithstanding the non-avoidance provision at condition 8.4.

5.2 the **Director** or **Company**

- (a) gaining an unlawful profit remuneration or advantage or conferring such a profit remuneration or advantage to a related person or entity or
- (b) committing any dishonest or fraudulent act or omission or any willful violation of law.

This exclusion shall only apply to such **Director** or **Company** who is guilty of the above conduct as established through a final adjudication by any a court or tribunal or by admission by that **Director** or **Company**.

5.3 damage to or destruction of any tangible property or the loss of use thereof

5.4 a **Claim** by a natural person for bodily injury sickness disease or mental injury or anguish or death although this exclusion shall not apply to an **Employment Claim** or (for the avoidance of doubt) an **HSE Investigation** or an **HSE Prosecution** or other similar investigatory regulatory or criminal proceedings

5.5 a **North American Claim**

5.6 the direction management or administration of a pension scheme including any **Company** sponsored employee pension plans trusts or programmes

5.7 any **Contamination** unless it is specifically provided for under insuring clauses 1.1(a)(ii) 1.1(b)(ii) and 1.3(c)(iv) and provided no other exclusions apply

5.8 the offering of securities of the **Company** or **Outside Entity** by means of a prospectus or private placement after the inception of this Certificate unless specifically agreed in writing by **Us**

5.9 in respect of insuring clause 1.3(a) only a **Claim** arising out of the Transfer of Undertakings (Protection of Employment) Regulations 1981 unless otherwise provided by **Us** by way of endorsement

5.10 the provision of or failure to provide any professional advice or service whether or not for remuneration although this exclusion shall not apply to a **Claim** against a **Director** arising out of the implementation of the **Company's** risk management procedures in relation to the employee of the **Company** who gave or failed to give professional advice or service

6. Claims Provisions And Payment Of Professional Costs

6.1 **We** shall not have any liability under this Certificate unless

- (a) the **Notifiable Event** is first made during the **Period of Insurance** or the **Extended Period of Cover** if applicable and
- (b) The **Director** or **Company** has given notice in writing to **Us** of the **Notifiable Event** as soon as reasonably practicable after becoming first aware of it but in any event no later than 30 days after the end of the **Period of Insurance** or the **Extended Period of Cover** if applicable

6.2 A **Director** or the **Company** may give notice in writing to **Us** during the **Period of Insurance** or **Extended Period of Cover** of circumstances of which they first became aware during the **Period of Insurance** and which might reasonably be expected to give rise to a **Notifiable Event**. Any subsequent **Notifiable Event** which arises directly from the circumstances so notified shall be deemed to have been first made during the **Period of Insurance** or the **Extended Period of Cover** if applicable

6.3 Any notice under 6.1 or 6.2 above should be addressed to

Devonshire Claims Services
5th Floor Minster House
42 Mincing Lane
London EC3R 7AE

quoting the Certificate Number shown in the **Schedule**

- 6.4 The **Directors** or **Officers** and the **Company** shall at their own cost and in a timely fashion provide all information and assistance to **Us** reasonably required to allow any **Notifiable Event** to be effectively investigated defended and or resolved This shall include the provision of internal reports and investigations legal opinions and advices correspondence and pleadings in connection with any **Notifiable Event**
- 6.5 **We** shall have the right but not the obligation to control the defense and settlement of any **Notifiable Event** including the appointment of lawyers to represent the **Directors** or the **Company**
- 6.6 Where the **Director** or **Company** has appointed its own lawyers **We** shall not have any liability to pay **Professional Costs** unless it has given its prior and continuing consent to them being incurred such consent not to be unreasonably withheld or delayed Where **We** appoint lawyers from **Our** approved panel then such consent will be deemed to have been given
- 6.7 **We** shall not have any liability in respect of a **Claim** where the **Director** or **Company** has made an admission offer or settlement without **Our** consent such consent not to be unreasonably withheld or delayed
- 6.8 Where **We** advance **Professional Costs** on behalf of the **Director** or the **Company** these shall be repayable by the **Director** or the **Company** in the event it is determined that **We** are not liable to do so under the terms of this Certificate
- 6.9 If the **Director** or the **Company** refuses to consent to any settlement and elects to contest a **Claim** or **Employment Claim** then **Our** liability shall not exceed the amount for which the **Claim** or **Employment Claim** could have been settled including **Professional Costs** incurred up to the date of the refusal to consent

7. Conditions

- 7.1 In the event that not all of the **Loss** or **Professional Costs** are covered under this Certificate **We** and the **Director** and the **Company** (as appropriate) shall negotiate in good faith to agree a fair and proper basis for allocation of that part of the **Loss** or **Professional Costs** that should be paid under the Certificate taking into account the relative legal and financial exposures of the various parties and the proportion to which the **Losses** and **Professional Costs** are not covered under the Certificate In the event that the various parties cannot agree between themselves they shall submit the issue to a **Queens Counsel** (to be mutually agreed upon) to determine a fair and proper basis for allocation on the above basis and that decision shall be binding on the parties
- 7.2 In the event of a **Change in Control** **We** shall only be liable for **Loss** and **Professional Costs** that arise from **Wrongful Acts** committed or alleged to have been committed prior to the date of such **Change in Control**
- 7.3 With respect to **Subsidiaries** **We** shall only be liable for **Loss** and **Professional Costs** that arise from **Wrongful Acts** committed or allegedly committed after the effective date that the **Subsidiary** became a **Subsidiary** and prior to the date the **Subsidiary** ceases to be a **Subsidiary**
- 7.4 Where **We** make any payment under this Certificate it shall be subrogated to the rights of recovery of the **Directors** or the **Company** as the case may be The **Director** or **Company** shall provide such co-operation and assistance as **We** may reasonably require in order to exercise **Our** subrogation rights
- 7.5 If in respect of any **Loss** or **Professional Costs** the **Directors** or **Company** are entitled to indemnification from any other source including any other valid Certificate of insurance or would be entitled but for the existence of this Certificate then this Certificate shall apply only in excess of the amount of that indemnity available from such other source
- 7.6 A person who is not a party to this Certificate may not enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999
- 7.7 This Certificate and any rights hereunder cannot be assigned without **Our** written consent
- 7.8 **Our** liability under this Certificate shall be several and not joint and shall be solely to the extent of its individual subscription
- 7.9 With respect to notices under this Certificate
- (a) The **Company** agrees to act on behalf of all **Directors** with respect to the giving and receiving of notices under this Certificate The **Directors** agree that the **Company** may act on their behalf in this way
 - (b) **We** may send notices or requests to the **Company** or the **Director** via their insurance brokers

8. Separate Interests In Certificate

- 8.1 The **Proposal** shall be construed as a separate application for insurance by each of the **Directors** and the **Company** Each of the **Directors** and the **Company** has a severable interest in the Certificate
- 8.2 In determining coverage for a particular **Director** or **Company** **We** shall only take into account the statements made by knowledge possessed by or the acts omissions or conduct of that particular **Director** or **Company**

- 8.3 Since the Company can only act through its **Directors** the statements made by knowledge possessed by or the acts omissions or conduct on the part of any two out of the **Companys** chairman of the board managing director finance director chief legal officer or their equivalents shall be deemed to be imputed or attributed to the **Company** unless the applicable law provides the knowledge acts omissions or conduct of any one **Director** shall bind the **Company**
- 8.4 We agree to waive any right We may have to avoid or rescind any **Directors** or **Companys** interest in the Certificate as a result of his or its innocent or negligent non-disclosure or material misrepresentation

9. Governing Law And Disputes

- 9.1 In the event that any dispute should arise out of or in connection with the Certificate including any question regarding existence validity or termination then such dispute shall be referred to and finally resolved by arbitration under the LCIA Rules The arbitrator shall be a Queens Counsel mutually agreed between the parties failing which a suitable Queens Counsel shall be appointed by the President of the LCIA Court The place of the arbitration shall be London and the language used will be English
- 9.2 The governing law in relation to this Certificate shall be the law of England and Wales. Where the **Company** listed at Item A of the Schedule is domiciled in Scotland or Northern Ireland then the proper law shall be the law of Scotland or Northern Ireland respectively

10. Premium Payment and Cancellation

- 10.1 The consideration for this Certificate is the premium stated at Item I of the **Schedule** and the **Company** shall pay the premium to **Us** within 30 days of the end of the month in which this Certificate inception (or in respect of instalment premiums or any additional premiums when due)
- 10.2 The consideration for the **Extended Period of Cover** is the additional premium stated at Item F of the **Schedule** and the **Company** shall pay the additional premium within 30 days of the end of the month in which this Certificate expired
- 10.3 This Certificate is non-cancellable unless the premium or additional premium has not been so paid in which case **We** shall have right to cancel this Certificate by giving written notice to the **Company** **We** shall give a notice period of at least 14 days and if the premium or additional premium is paid in full in this period then the notice of cancellation shall automatically be revoked If not the Certificate shall be automatically cancelled at the end of the notice period
- 10.4 In the event of cancellation the premium is due to the **Us** on a pro rata basis for the period that **We** are on risk but the full Certificate premium shall be payable in the event of a notification under clauses 6.1 and 6.2 above prior to the date of cancellation

11. Certificate Interpretation

- 11.1 In this Certificate
- (a) reference to any Act statute or statutory provision shall include a reference to that provision as amended re-enacted or replaced from time to time whether before or after the date of the inception of this Certificate or the equivalent legislation in any other jurisdiction in the European Union and
 - (b) if any term condition exclusion or endorsement or part thereof of this Certificate is found to be invalid or unenforceable then the remainder shall be in full force and effect
 - (c) reference to the masculine shall include a reference to the feminine or neuter and reference to the singular shall include reference to the plural and in each case vice versa
 - (d) the headings in this Certificate are for general reference only and shall not be considered when determining the meaning of this Certificate

12. Complaints and Enquiries

We are dedicated to providing the highest possible level of customer satisfaction in all areas of **Our** business If for any reason you have a query or feel that the service you receive has fallen below those standards you should report this to **Us** at once All complaints will be handled promptly and a policy of open communication will be adopted

Any complaint should be addressed in the first instance to

The Managing Director
Glemham Underwriting Limited
1 Pound Farm Cottages
Great Glemham
Saxmundham
Suffolk IP17 2DQ

Should You remain dissatisfied You can ask the Complaints Department at Lloyd's to review the Complaint The address is

Complaints Department
Lloyd's
One Lime Street
London EC3M 7HA

Referral can also be made to the Financial Ombudsman Service after the Complaints Department at Lloyd's have completed their investigation process or eight weeks if this is earlier The address is

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9S

13. Definitions

A defined word or phrase will be printed in bold each time it appears in this Certificate except for headings and titles

Each time We use one of the words or phrases listed below in bold it will have the same meaning wherever it appears in this Certificate unless We state otherwise

- 13.1 **Change in Control** means the event whereby a **Company** consolidates or merges into or sells all or substantially all of its assets to any person entity or group of persons or entities acting in concert or becomes a subsidiary of or controlled by another unconnected entity
- 13.2 **Claim** means a written demand for compensation for any **Wrongful Act**
- 13.3 **Company** means the company named in Item A of the **Schedule** and any **Subsidiary**
- 13.4 **Companys Limit of Indemnity** means the amount shown at Item D of the **Schedule**
- 13.5 **Contamination** means the actual alleged or threatened discharge release escape dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a **Director** or the **Company** test for monitor clean up remove contain treat detoxify or neutralise pollutants
- 13.6 **Contamination Clean Up Costs** means the costs involved in testing for monitoring cleaning up removing containing treating detoxifying or neutralising **Contamination**
- 13.7 **Director** means any natural person who by the expiry of the **Period of Insurance** is or has been
- (a) a director or officer of the **Company** including a **Non-Executive Director** a shadow director or a de facto director or
 - (b) an employee of the **Company** who acts in a managerial or supervisory capacity
- For the avoidance of doubt a **Director** shall not include the external or statutory auditor of the **Company**
- 13.8 **Directors Limit of Indemnity** means the amount shown at Item C of the **Schedule**
- 13.9 **Employment Claim** means a claim made by an employee or prospective employee of the **Company** alleging
- (a) the wrongful termination of employment demotion refusal to employ or refusal to promote or
 - (b) discrimination or harassment or
 - (c) the wrongful change in employment terms or conditions or
 - (d) defamation (libel or slander) which relates to an employees skills performance qualifications reputation integrity disciplinary record or termination of employment or
 - (e) retaliatory treatment on account of the employees exercise or attempted exercise of his legal rights
- 13.10 **Extended Period of Cover** means the period immediately following the expiry of the **Period of Insurance** For **Retired Directors** this period shall be six years but in all other cases it shall be for the period shown at item F of the **Schedule**
- 13.11 **HSE Investigation** means any formal investigation or enquiry conducted by any enforcing authority under the Health and Safety at Work Act 1974
- 13.12 **HSE Prosecution** means any formal proceedings initiated by the Crown Prosecution Service or other enforcing agency under the Health and Safety at Work Act 1974
- 13.13 **Loss** means the legal liability to pay damages as a result of (i) a judgment or award made by a competent court or tribunal or (ii) a settlement **Loss** shall not include
- (a) fines taxes or penalties or
 - (b) punitive or exemplary damages or any the multiplied part of any damages award or
 - (c) any matters deemed uninsurable under English Law or
 - (d) employee remuneration benefits stock options or severance payments or
 - (e) the repayment of sums paid to the **Director** or **Company** or
 - (f) **Contamination Clean Up Costs**

- 13.14 **Non-Executive Director** means any natural person who by the expiry of the **Period of Insurance** is or has been a non-executive director or officer of the **Company**
- 13.15 **Non-Executive Extra Limit of Indemnity** means the amount shown in Item E of the **Schedule**
- 13.16 **North American Claim** means any **Claim Employment Claim** formal investigation criminal prosecution or regulatory proceeding that is brought in or that is subject to the jurisdiction of the courts within the United States of America its territories and or possessions and or Canada
- 13.17 **Notifiable Event** means the **Claim Employment Claim HSE Investigation** or other formal investigation **HSE Prosecution** or other criminal prosecution or regulatory proceeding request for extradition or the theft of monies or property from the **Company** as described in the insuring clauses above The **Notifiable Event** is first made when the **Director** or **Company** first receives notice of it or in the case of the theft of monies or property becomes aware of it
- 13.18 **Outside Entity** means any entity including a not for profit organisation (such as a trade association) to which the Director is appointed as a director officer trustee governor or equivalent at the specific request of the Company provided such entity
- (a) is domiciled in the European Union and
 - (b) is not a pension fund scheme and
 - (c) is not a private equity or venture capital company or similar entity
- 13.19 **Period of Insurance** means the period in Item B of the **Schedule**
- 13.20 **Professional Costs** means reasonable and necessary legal or other professional fees costs charges and expenses For the avoidance of doubt they shall not include
- (a) the **Company's** own costs including management costs salaries and expenses or
 - (b) **Contamination Clean Up Costs**
- 13.21 **Proposal** means all the information supplied by the **Company** to **Us** (whether written electronic or any other means) which it is hereby agreed is the basis of this Certificate
- 13.22 **Retired Director** means a **Director** who other than by reason of a **Change in Control** has voluntarily ceased to hold such office prior to expiry of the **Period of Insurance**
- 13.23 **Schedule** means the document entitled Schedule that relates to this Certificate
- 13.24 **Subsidiary** means any entity domiciled in the European Union in which the **Company** either directly or indirectly
- (a) holds the majority of the voting rights or
 - (b) has the right to appoint or remove a majority of the board of directors or
 - (c) holds more than half of the issued share capital
- 13.25 **We/Us/Our** means certain Underwriters at Lloyd's evidenced by the Lloyd's Contract (the number of which is specified in the **Schedule**)
- 13.26 **Wrongful Act** means any actual alleged or proposed act error misstatement omission or breach of duty In the case of a shareholder derivative action it also includes a proposed act or omission