



ace europe

elite Not For Profit

NFP Organisation
Insurance Policy

INDEX

<u>Contents</u>	<u>Page</u>
1. Section 1, Insuring Agreements	1
2. Section 2, Terms Applicable to All Sections	3
3. Section 3, Insured Liability Coverage	5
4. Section 4, Employee Dishonesty Coverage	17
Data Protection	21
Complaints Procedure and FSA	22



ace europe

**ACE European Group
Ltd.**
ACE Building
100 Leadenhall Street,
London, EC3A 3BP

020 7173 7000 tel
020 7173 7841 fax

www.aceeurope.co.uk

ACE European Group Limited is authorised and regulated by the Financial Services Authority

NFP Organisation Insurance Policy

CLAIMS MADE POLICY

In consideration of the payment of the premium shown at Item 8 of the Schedule and in reliance upon the Proposal and subject to all terms, conditions and limitations of this Policy the Insurer agrees with the Insured(s) as follows:

Section 1 Insuring Agreements

Insuring Agreement Applicable to Section 3 Insured Person & Organisation Liability Coverage

- A. The Insurer will pay on behalf of the Insured Person all Loss resulting from a Claim first made during the Policy Period against an Insured Person.
- B. The Insurer will pay on behalf of the Organisation all Loss resulting from a Claim first made during the Policy Period against an Insured Person where the Organisation has paid such Loss.
- C. The Insurer will pay all Legal Representation Expenses in respect of an Investigation on behalf of the Insured Person and all Legal Representation Expenses paid by the Organisation on behalf of the Insured Person.
- D. The Insurer will pay on behalf of the Organisation all Loss resulting from a Claim first made during the Policy Period against the Organisation.
- E. The Insurer will pay on behalf of the Organisation all Legal Representation Expenses incurred solely in respect of an Investigation under the Health and Safety at Work Act 1974.
- F. The Insurer will pay on behalf of the Organisation all Legal Representation Expenses incurred solely in respect of an Investigation under the Corporate Manslaughter and Corporate Homicide Act 2007.

Insuring Agreement Applicable to Section 4 Employee Dishonesty

- G The Insurer will pay on behalf of the Organisation all Direct Financial Loss which is first Discovered and notified to the Insurer during the Policy Period.

SIGNED for and on behalf of the Insurer

Andrew Kendrick *Chairman and Chief Executive Officer*

A 24-hour help-line is available to any Director or Officer of the Organisation requiring legal advice in respect of his or her role as a Director or Officer of the Organisation in connection with the insurance provided by this policy. This service is restricted to matters governed by the laws of England and Wales and Scotland. The telephone number is 08705 234500 or in Scotland 0141 3322887, and it will be necessary to quote the policy number.

**SPECIAL
RECEIVED
BY**

Section 2 Terms Applicable to All Sections

- 2.1 General** The provisions of this Section apply to all Sections of this Policy.
- Words and expressions defined for the purposes of the Policy are given initial capital letters. Use of the singular includes the plural according to the context.
- 2.2 Definitions**
- 2.2.1 Director or Officer means a director or officer of the Organisation, where the Organisation is a company, including the equivalent position in any other jurisdiction.
- 2.2.2 Discovery Period means the periods in Item 9 of the Schedule from the date on which the Policy Period expires.
- 2.2.3 Organisation means the organisation shown in Item 1 of the Schedule and any Subsidiary.
- 2.2.4 Insured means the Organisation and/or an Insured person. It shall not include any external auditor.
- 2.2.6 Insurer means ACE EUROPEAN GROUP LTD.
- 2.2.7 Limit of Liability means the amount stated in Item 3 of the Schedule.
- 2.2.8 Policy means this policy and any endorsement thereto.
- 2.2.9 Policy Period means the period of time shown in Item 2 of the Schedule of this Policy.
- 2.2.10 Proposal means the proposal form submitted by the Insured in applying for this Policy and all information and documentation accompanying it.
- 2.2.11 Securities means any equity or debt instrument issued by an Organisation or other entity.
- 2.2.12 Subsidiary means any entity that the Organisation shown in Item 1 of the Schedule directly or indirectly:
- (i) controls a majority of the voting rights; or
 - (ii) controls the right to appoint or remove a majority of its board of Directors; or
 - (iii) holds more than half of the issued share capital; or
 - (iv) any joint venture or entity over which the Organisation in Item 1 of the Schedule directly or indirectly exercises effective management control.
- 2.3 Conditions**
- 2.3.1 Limit of Liability**
- (i) The amounts shown in Item 3 of the Schedule are separate Limits of Liability for each Section of this Policy.
 - (ii) A payment under one Section of this Policy shall not reduce the Insurer's Limit of Liability under another Section of the Policy.
- 2.3.2 Retention**
- (i) The retentions shall be paid by the Organisation and the Insurer shall have no obligation to pay any amount within such retentions.

- (ii) The application of the retention under one Section of this Policy shall not reduce the retention under any other Section.

2.3.3 Other Insurance

If an Insured is or would (but for the existence of this Policy) be entitled to cover under any other policy (save for insurance specifically arranged to apply in excess of this Policy) in respect of any Claim or Investigation or Direct Financial Loss, the Insurer shall not be liable for loss under this Policy other than in excess of any amount that is or would (but for the existence of this Policy) have been payable under any other such policy.

2.3.4 Subrogation

In the event the Insurer makes any payment under this Policy, the Insurer shall be subrogated to all of the Insured's rights of recovery, and the Insured shall co-operate with the Insurer in securing such rights. The Insured shall not do anything to prejudice the Insurer's ability to assert such rights.

The Insurer shall not exercise any rights of subrogation against an Insured unless it is established that such Insured has committed a deliberate criminal act or obtained any profit or advantage to which such Insured was not legally entitled.

2.3.5 Authorisation

The Organisation shown in Item 1 of the Schedule hereby agrees to act on behalf of all Insureds with respect to this Policy.

2.3.6 Non-assignment

No change in, modification of, or assignment of interest under this Policy shall be effective unless agreed in writing by the Insurer.

2.3.7 Policy Interpretation

This Policy shall be governed by English law, and any dispute regarding the interpretation of this Policy, except as provided under clauses 3.5.4(viii) and 3.5.5(iv), shall be subject to the exclusive jurisdiction of the courts of England and Wales.

2.3.8 Contracts (Rights of Third Parties) Act 1999

No person other than an Insured shall have any rights under this Policy whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

2.3.9 Severability

The Proposal shall be construed as a separate proposal by each Insured Person and with respect to statements and particulars in the Proposal no statements made or information possessed by any Insured Person shall be imputed to any other Insured Person to determine whether cover is available for that other Insured Person.

The Insurer irrevocably waives any right it may have to rescind or avoid this Policy, or any severable part of it, on the grounds of innocent or negligent non-disclosure or innocent or negligent misrepresentation.

Only statements made in the Proposal and knowledge possessed by an Insured Person who is the subject of a claim under this Policy shall be imputed to the Organisation for the sole purposes of determining if cover is available under Insuring Agreement B with respect to such Insured Person.

Only statements made and information possessed by any Finance Director, Chief Executive, Managing Director or Chairman of the organisation shown in Item 1 of the Schedule shall be imputed to an Organisation for the purposes of determining cover under this Policy.

Section 3 – Insured Person & Organisation Legal Liability

The terms and conditions of this Section apply only to this Section and shall not be construed to apply to any other Section.

3.2 Extensions Applicable to Section 3

3.2.1 Subsidiaries

- (i) If during the Policy Period the Organisation acquires an entity so that it becomes a Subsidiary that:
 - (a) has total assets less than the Acquisition Limit referred to in Item 7 of the Schedule; and
 - (b) is domiciled outside of the United States of America or Canada ; and
 - (c) has no listing of its Securities in the United States of America or Canada;

then this Policy shall automatically extend to include such Subsidiary without notice to the Insurer or additional premium being payable, but only in respect of Wrongful Acts or conduct after such entity becomes a Subsidiary.

- (ii) Any Subsidiary acquired during the Policy Period and not covered in item (i) above shall automatically be covered under this Policy for a period of 45 days from the date of acquisition. With the written agreement of the Insurer and subject to any additional premium, amended terms and conditions, this Policy may be extended to include such Subsidiary beyond 45 days, but only in respect of Wrongful Acts or conduct after such entity becomes a Subsidiary.
- (iii) If the Organisation effects a sale or dissolution of a Subsidiary, this Policy shall continue to include such Subsidiary but only for Wrongful Acts or conduct prior to the effective date of sale or dissolution.
- (iv) The Insurer shall only be liable for Loss in respect of Wrongful Acts or conduct whilst an entity is a Subsidiary.

3.2.2 Emergency Defence Costs, Legal Representation Expenses, Bail Bond Costs and Public Relations Expenses

If it is not possible for the Insured to obtain the Insurer's consent prior to the incurring of Defence Costs, Legal Representations Expenses, Bail Bond Costs or Public Relations Expenses the Insurer will give retrospective consent as long as the Insurer's consent is sought within fourteen days of the first of such Defence Costs, Legal Representation Expenses, Bail Bond Costs or Public Relations Expenses being incurred. The sub-limit of liability for all payments under this Extension is 10% of the Limit of Liability for this section or sub-limit of liability for this section as applicable.

3.2.3 Retired Insured Person Cover

In the event that this Policy is not renewed or replaced with any other policy affording directors and officers liability cover and a Discovery Period is not invoked, this Policy shall extend to include as an Insured Person any Retired Insured Person in respect of Claims made or Investigations commenced against such persons during the period of 10 years immediately following the date of such non-renewal.

3.2.4 **Takeovers and Mergers Run-off**

In the event of a Transaction taking place, the Insurer may extend this Policy to include Claims first made or Investigations first commenced against an Insured within a period of 72 months from the expiry date of the Policy Period. Such extension is subject to additional terms, conditions, and premium as the Insurer may require.

3.2.5 **Outside Directorship Extension**

- (i) This Policy shall extend to include an Insured Person who at the specific request of the Organisation is a director, officer, trustee, governor or equivalent of any Outside Entity in their capacity as such.
- (ii) Cover under this Extension shall be excess of any indemnification provided by the Outside Entity and any valid and collectible directors and officers liability insurance in respect of the Outside Entity.
- (iii) If the Outside Entity's directors and officers liability Insurance is provided by the Insurer or any member of the ACE group of companies, then the total aggregate Limit of Liability for all Loss covered by virtue of this extension shall be reduced by the amount paid to any Insured Person under such policy.

3.2.6 **Public Relations Expenses**

This Policy is extended to include Public Relations Expenses. Cover under this extension will not be used to comply with a publicity order pursuant to section 10 of the Corporate Manslaughter and Corporate Homicide Act 2007.

3.2.7 **Loss of Documents**

This Policy shall extend to all costs incurred by the Organisation (but not including wages, salaries or other remuneration of any Insured Person) reasonably incurred in replacing or restoring Documents, which are lost, damaged or destroyed, provided that:

- (i) such loss, damage or destruction is sustained while the Documents are either in transit or in the custody of the Insured or of any person to whom the Insured has entrusted them during the Policy Period or Discovery Period, if applicable;
- (ii) such costs are incurred with the prior consent of the Insurer, which consent shall not be unreasonably withheld, up to a maximum amount of GBP 25,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to the aggregate Limit of Liability shown in Item 3(i) of the Schedule); and
- (iii) such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

The cover provided under this extension excludes any loss, damage or destruction arising out of wear or tear, gradual deterioration, moth or vermin.

3.2.8 **Corporate Manslaughter Extension**

Notwithstanding Exclusion 3.4.7 this Policy extends to include:

- (i) all Defence Costs and Legal Representation Expenses arising from any Claim or Investigation against an Insured Person alleging involuntary manslaughter, constructive manslaughter or gross negligence manslaughter or a breach of Health and Safety at Work Act 1974 legislation or any similar legislation in any other jurisdiction.

- (ii) all Defence Costs arising from any Claim against the Organisation alleging a breach of the Health and Safety at Work Act 1974 or a gross breach of duty under the Corporate Manslaughter and Corporate Homicide Act 2007.

3.2.9 **Bail Bond Costs, Crisis Costs, Public Relations Expenses & Reputation Protection Expenses**

This Policy is extended to include

- (i) Bail Bond Costs;
- (ii) Crisis Costs;
- (iii) Public Relations Expenses;
- (iv) Reputation Protection Expenses

3.2.10 **Extradition Proceedings**

This Policy is extended to include

- (i) Defence Costs;
- (ii) Bail Bond Costs;
- (iii) Crisis Costs;
- (iv) Public Relations Expenses;
- (v) Reputation Protection Expenses

in relation to Extradition Proceedings.

3.2.11 **Tax Extension**

This Policy shall extend to include an Insured Person's Loss arising from their personal liability for unpaid taxes where the Organisation has become insolvent except to the extent that such liability arises from the wilful intent of the Insured Person to breach any statutory duty governing the payment of taxes. Such cover shall apply up to the sub-limit shown in Item 12 of the Schedule.

3.3 Definitions Applicable to Section 3

- 3.3.1 Bail Bond Costs means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an Insured Person's contingent obligation for bail or equivalent in any jurisdiction required by a court in respect of any Claim. The sub-limit of liability for Bail Bond Costs is 10% of the Limit of Liability.
- 3.3.2 Benefits means perquisites, fringe benefits, health benefits, permanent health insurance benefits, amounts due or payments made in connection with an employee benefit plan or pension scheme, share or stock options or any other right to purchase, acquire or sell shares or stock, incentives or deferred compensation and any other obligation or payment other than basic remuneration made to or for the benefit of an Employee or a Director or Officer.
- 3.3.3 Claim means
- (i) any written demand; or
 - (ii) any civil or arbitral proceeding; or
 - (iii) any criminal prosecution; or
 - (iv) any formal administrative or regulatory proceeding, made against an Insured, alleging a Wrongful Act.
- 3.3.4 Crisis Costs means any reasonable professional fees, costs or expenses of any accredited:
- (i) counsellor; or
 - (ii) tax advisor
- retained by an Insured with the Insurer's prior written consent (which shall not be unreasonably withheld or delayed), in respect of any Claim. The sub-limit of liability for Crisis Costs is the sub-limit specified in Item 13 of the Schedule.
- 3.3.5 Defence Costs means reasonable legal and other professional fees, costs and expenses incurred by an Insured (including the cost of an appeal bond but without the obligation to apply for and furnish any such bond) with the prior written consent of the Insurer, not to be unreasonably withheld or delayed, that are necessary to defend or appeal a Claim.
- 3.3.6 Document means any document in either physical or electronic format which belongs to the Organisation or for which the Organisation is legally responsible, other than currency, Securities or any form of negotiable instrument.
- 3.3.7 Employee means an employee or volunteer of the Organisation.
- 3.3.8 Employment Related Wrongful Act means any actual or alleged violation of employment laws or any other legal provisions relating to any individual's actual or prospective employment relationship with the Organisation.
- 3.3.9 Extradition Proceeding means:
- (i) a request for extradition of an Insured Person, a warrant for arrest in respect of an Insured Person or other proceedings under the provisions of the United Kingdom Extradition Act 2003; or
 - (ii) any associated appeals, including but not limited to, to the European Court of Human Rights and the pursuit of judicial review proceedings against the decision of the Secretary of State or other appropriately authorised representative of the United Kingdom Government to issue an extradition certificate under the United Kingdom Extradition Act 2003; or

- (iii) the equivalent of the above in any other jurisdiction.

A Wrongful Act is not required for cover for an Extradition Proceeding.

3.3.10 Insured Person means a natural person who was, now is or becomes during the Policy Period:

- (i) a Director or Officer, trustee, member of the governing body or committee, council member, or governor of the Organisation;
- (ii) an Employee;
- (iii) any lawful spouse of a Director or Officer, trustee, member of the governing body or committee, council member, governor of the Organisation or Employee, but only where the Claim results from the Wrongful Act of such Director or Officer or Employee;
- (iv) the estate, heir or legal representative of a deceased Director or Officer, trustee, member of the governing body or committee, council member, governor of the Organisation or Employee;
- (v) the legal representative of a Director or Officer, trustee, member of the governing body or committee, council member, governor of the Organisation or Employee in the event of the incapacity, insolvency or bankruptcy of such Director or Officer or Employee.

3.3.11 Investigation means a formal or official investigation, examination or inquiry into the Insured in their capacity as such at which the attendance of the Insured Person is first required or requested in writing during the Policy Period or Discovery Period.

3.3.12 Legal Representation Expenses means the reasonable legal costs or related professional fees incurred by or on behalf of an Insured (but not including any remuneration of any Director or Officer or Employee) with the prior written consent of the Insurer, not to be unreasonably withheld or delayed, directly in connection with an Insured co-operating with an Investigation.

The sub-limit of liability in respect of Insuring Agreement F is the sub-limit shown in Item 16 of the Schedule.

3.3.13 Loss means all amounts which an Insured is legally and personally obligated to pay including but not limited to:

- (i) any damages awarded, judgments entered, settlements reached including plaintiff's legal costs;
- (ii) Bail Bond Costs;
- (iii) Crisis Costs;
- (iv) Defence Costs;
- (v) Legal Representation Expenses;
- (vi) Public Relations Expenses;
- (vii) Reputation Protection Expenses;
- (viii) aggravated, punitive and exemplary damages where insurable by law. The enforceability of which is governed by the applicable law which most favours cover for punitive and exemplary damages.

Loss does not include:

- (a) fines or penalties imposed by law, or, except as provided in (viii) above, any matter deemed uninsurable under the law applicable to this Policy;

- (b) taxes or sums payable in relation to taxes except as provided under Extension 3.2.10.
 - (c) Benefits or any form of non-monetary or injunctive relief arising out of an Employment Related Wrongful Act;
 - (d) any amount claimed by an employee of the Organisation arising out of an Employment Related Wrongful Act, which the Organisation would have been liable for in the absence of such Employment Related Wrongful Act.
- 3.3.14 Non-Indemnifiable Loss means Loss of an Insured Person that an Organisation is unable to indemnify due to:
- (i) legal prohibition; or
 - (ii) a prohibition in the Articles of Association, charter, bylaws, contract or similar documents of such Organisation; or
 - (iii) insolvency under section 123 of the Insolvency Act 1986 or the equivalent law in any other jurisdiction.
- 3.3.15 Not-for-profit Entity means a registered charity or a trade association or other non-profit organisation in the United Kingdom or the equivalent in any other jurisdiction.
- 3.3.16 Outside Entity means:
- (i) any entity which is not a Subsidiary and has no Securities traded on any exchange in the United States of America unless such entity is listed by endorsement to this Policy; or
 - (ii) any Not-for-profit Entity;
- 3.3.17 Pollutant means any contaminant, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, asbestos, asbestos-containing materials, fumes, acids, alkalis, nuclear or radioactive material, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 3.3.18 Pollution means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any Pollutant whether in a solid, liquid, gas, odour, noise, vibration, electromagnetic radiation, ionising radiation, thermal or other form at any time.
- 3.3.19 Public Relations Expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an Insured may, in the reasonable exercise of its discretion, engage with the prior written consent of the Insurer, not to be unreasonably withheld or delayed, in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from any Claim or Investigation covered under this Policy. The sub-limit of liability for all Public Relations Expenses is the sub-limit specified in Item 14 of the Schedule.
- 3.3.20 Reputation Protection Expenses means the reasonable fees and related expenses of a public relations firm or consultant which an Insured may engage in order to disseminate the findings of a final adjudication in favour of the Insured, arising from a Claim. Such fees and expenses shall only be incurred with the written consent of the Insurer, not to be unreasonably withheld or delayed. The sub-limit of liability for all Reputation Protection Expenses is the sub-limit specified in Item 15 of the Schedule.
- 3.3.21 Shadow Director means a Director or Officer or Employee acting as a shadow director as defined in section 251 of the Companies Act 2006 or equivalent legislation in any other jurisdiction, of any entity other than the Organisation.

3.3.22 Transaction means any one of the following events:

- (i) the Organisation shown in Item 1 of the Schedule merges with or consolidates into any other entity; or
- (ii) the Organisation shown in Item 1 of the Schedule sells all or more than 90% of its assets to any person or entity or persons or entities acting in concert; or
- (iii) any person or entity or persons or entities acting in concert acquire more than 50% of the issued share capital of the Organisation shown in Item 1 of the Schedule; or
- (iv) any person or entity or persons or entities acting in concert acquire control of the appointment of the majority of directors of the Organisation shown in Item 1 of the Schedule.

3.3.23 Wrongful Act means any actual or alleged, breach of trust, error, omission, misstatement, misleading statement, neglect or breach of duty or an Employment Related Wrongful Act by an Insured or any other matter claimed against an Insured Person whilst acting in the capacity of an Insured Person.

3.4 Exclusions Applicable to all Insuring Agreements other than Insuring Agreement G, Employee Dishonesty

The Insurer shall not be liable to make any payment:

3.4.1 based on, arising from or attributable to:

- (i) any dishonest or fraudulent act or omission of the Insured or an intentional breach of the law by the Insured; or
- (ii) any personal profit or advantage gained by the Insured to which such Insured was not legally entitled;

provided that this exclusion shall only apply if it is established through a judgment or any other final adjudication (including any appeal thereof) or any written admission by such Insured that the relevant conduct occurred;

3.4.2 based on, arising from or attributable to any pending or prior litigation or other proceedings (including but not limited to civil, criminal, regulatory and administrative proceedings or investigations) involving the Insured or an Outside Entity and issued or otherwise begun before the date shown at Item 6 of the Schedule or alleging or derived from the same or substantially the same facts or circumstances alleged in the pending or prior litigation or proceedings;

3.4.3 based on, arising from or attributable to any Wrongful Act or a series of related Wrongful Acts alleged in any Claim, circumstance or any Investigation of which notice has been given under any policy existing or expired before or on the inception date of this Policy;

3.4.4 based on, arising from or attributable to any Claim brought or maintained by or on behalf of the Organisation or Outside Entity in the United States of America or its territories, except:

- (i) any Claim against any Insured Person:
 - (a) for contribution or indemnity if such Claim directly results from another Claim that would otherwise be covered under this Policy; or

- (b) any shareholder derivative action brought or maintained on behalf of the Organisation or Outside Entity without the solicitation or participation of an Insured Person, Organisation or Outside Entity unless legally compelled to do so; or
 - (c) brought or maintained by a liquidator, receiver or administrative receiver, or similar person under the laws of any other jurisdiction; or
- (ii) Defence Costs;
- 3.4.5 based on, arising from or attributable to any Claim or Investigation brought or maintained against an Insured Person in their capacity as a trustee of any pension, profit sharing, health, welfare or any other employee benefit programme established by the Organisation or for any actual or alleged breach of an Insured's responsibilities or obligations as imposed in the United Kingdom by the Pensions Act 1995 and in the United States of America by the Employee Retirement Income Security Act 1974 both as from time to time amended, or any similar laws, common or statutory, including the equivalent laws in any other jurisdiction;
- 3.4.6 based on, arising from or attributable to any public offering of any Securities during the Policy Period;
- 3.4.7
 - (i) for bodily injury, mental illness, emotional distress, injury to feelings, sickness, disease or death of any person; or
 - (ii) for damage to or destruction of any tangible property including loss of use of such property;
- provided that the above shall not apply to:
 - (a) Non-Indemnifiable Loss; or
 - (b) emotional distress and/or injury to feelings resulting from an Employment Related Wrongful Act.
- 3.4.8 based on, arising from or attributable to Pollution provided that this exclusion shall not apply to:
 - (i) Non-Indemnifiable Loss; or
 - (ii) Defence Costs or Legal Representation Expenses paid by the Organisation for a Claim or Investigation brought outside the United States of America against an Insured, up to the sub-limit shown at Item 11 of the Schedule; or
 - (iii) any Claim instigated by any shareholder of the Organisation on their own behalf or in the name of the Organisation without the solicitation or participation of an Insured unless legally compelled to do so.

Exclusions Applicable to Insuring Agreements D, E and F only

The Insurer shall not be liable to make any payment:

- 3.4.9 based on, arising from or attributable to the Organisation's performance or attempted performance of professional services or any act, error or omission relating thereto;
- 3.4.10 based on, arising from or attributable to any actual or alleged contractual liability assumed by the Organisation under any contract or agreement provided that this exclusion shall not apply to:
 - (i) a Claim brought against the Organisation alleging an Employment Related Wrongful Act; or
 - (ii) Defence Costs for a Claim brought against the Organisation, up to the sub-limit shown in Item 17 of the Schedule.

- 3.4.11 based on, arising from or attributable to any actual or alleged infringement, misappropriation or violation of any copyright, patent, trade marks, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services;
- 3.4.12 for direct or indirect tax obligations of any kind;
- 3.4.13 based on, arising from or attributable to legal action or litigation brought in a court of law constituted in the United States of America or Canada, or arising out of the activities of the Organisation in the United States of America or Canada;
- 3.4.14 based on, arising from or attributable to any pension, profit sharing, health, welfare or any other employee benefit programme established by the Organisation or for any actual or alleged breach of the Organisation's responsibilities or obligations as imposed in the United Kingdom by the Pensions Act 1995 and in the United States of America by the Employee Retirement Income Security Act 1974 both as from time to time amended, or any similar laws, common or statutory, including the equivalent laws in any other jurisdiction;
- 3.4.15 based on, arising from or attributable to any liability assumed by the Organisation under an express employment contract or agreement unless the Organisation would have had such liability even in the absence of such contract or agreement;
- 3.4.16 based on, arising from or attributable to any Claim brought or maintained by or on behalf of the Organisation;

For the purposes of determining the applicability of any Exclusion the Wrongful Act of an Insured shall not be imputed to any other Insured.

3.5. Conditions Applicable to Section 3

3.5.1 Limit of Liability

- (i) The amount shown in Item 3(i) of the Schedule is the Insurer's maximum aggregate liability under this Section of the Policy, irrespective of the number of claims under this Section of the Policy, the amount claimed, the number of Insureds who claim, or when such claims are made under this Section of the Policy.
- (ii) Any sub-limit specified in this Section shall be the Insurer's maximum aggregate liability under each such sub-limit irrespective of the number of claims under this Section of the Policy, the amount claimed or the number of Insureds who claim.
- (iii) If a single Wrongful Act or act or a series of related Wrongful Acts or acts give rise to a claim under this Section of the Policy then all claims made after the expiry of this Section of the Policy arising out of such similar or related Wrongful Acts or acts shall be treated as though first made during this Policy Period.

3.5.2 Retention

- (i) The retentions shown in Items 4(i) – 4(vi) of the Schedule are payable by the Organisation. In the event an Insured Person is required to repay all or part of the retention to the Organisation in accordance with sections 234(3) and 205 of the Companies Act 2006 the Insurer agrees to pay such amount to the Organisation on behalf of the Insured Person.
- (ii) If the Organisation fails to indemnify an Insured Person other than for Non-Indemnifiable Loss then subject to all other terms and conditions of this Policy the Insurer shall pay the retention and the Organisation shall pay the amount of the retention to the Insurer.

3.5.3 Notification of Claims, Investigations and Reporting Circumstances

- (i) It is a condition precedent to the Insurer's liability to make any payment in respect of a Claim to which clause 3.5.4(ii) or (iv) is applicable, that the Insured gives written notice to the Insurer of such Claim as soon as practicable. For all other claims under this Policy the Insured shall give written notice to the Insurer as soon as practicable (but this shall not be a condition precedent). In any event all notices under this clause shall as a condition precedent to the Insurer's liability be made during the Policy Period or within 90 days thereafter, or if applicable, during the Discovery Period or within 30 days thereafter.
- (ii) Notice and all information shall be sent in writing to the Insurer at 200 Broomielaw, Glasgow G1 4RU (E-mail: claims@ace-ina.com)
- (iii) If during the Policy Period the Insured shall become aware of any circumstances that might give rise to a claim under this Policy and gives notice of the same to the Insurer, then any Claim or Investigation later made against any Insured shall for the purposes of this Policy be treated as a Claim made or Investigation commenced during the Policy Period.

3.5.4 Conduct of Proceedings

- (i) In respect of Insuring Agreements A, B and C, the Insured Person shall have the duty to defend any Claim or Investigation notified under this Policy, and the Insurer shall have the right to associate with the Insured Person in such defence.
- (ii) In respect of Insuring Agreements D, E and F, the Insurer shall have the right to defend, on behalf of the Organisation, any Claim or Investigation notified under this Policy.
- (iii) The Insurer will accept the retention of separate legal representation by any Insured Person as reasonable to the extent required by a material conflict of interest.
- (iv) The Insurer shall have the right to defend any Claim brought against an Insured Person by or on behalf of any:
 - (a) Organisation; or
 - (b) Outside Entity

Unless such Claim is:

- (a) for contribution or indemnity if such Claim directly results from another Claim that would otherwise be covered under this Policy; or
- (b) a shareholder derivative action brought or maintained on behalf of the Organisation or Outside Entity without the solicitation or participation of an Insured Person, Organisation or Outside Entity unless legally compelled to do so; or
- (c) brought or maintained by a liquidator, receiver or administrative receiver, or similar person under the laws of any other jurisdiction.

With respect to such Claims the Insurer shall have no duty or obligation to communicate with any other Insured in relation to such Claim.

- (v) The Insured shall not do anything which could prejudice the Insurer in respect of a claim made under this Policy.

- (vi) The Insured shall not make any admission of liability in respect of, or agree to settle, any Claim or Investigation or incur any Loss, without the prior written consent of the Insurer (which shall not be unreasonably withheld or delayed).
- (vii) The Insured must give the Insurer and any representatives appointed by the Insurer all information they reasonably require, and fully co-operate and assist in the conduct of any investigation into any claim under this Policy.
- (viii) If there is a dispute between the Insurer and the Insured about whether to agree to a proposed settlement or about whether a Claim should continue to be defended (taking into account whether the Claim is likely on the balance of probabilities to be defended and such possibilities as may exist for settling the Claim), the Insurer may obtain an opinion from a Queen's Counsel or equivalent in a different jurisdiction to decide the issue. That decision shall be binding upon the Insurer and the Insured who shall act accordingly in relation to the proposed settlement or in continuing or not continuing to defend the action as the case may be.

3.5.5 **Advancement of Defence Costs and Allocation of Loss**

- (i) The Insurer shall advance Defence Costs on an ongoing basis prior to the final payment or settlement of any Claim and shall advance Legal Representation Expenses provided that any payment shall be repaid to the Insurer in the event that the Insured is not entitled to such payment.
- (ii) The Insurer shall advance Defence Costs and Legal Representation Expenses which the Organisation fails to advance or indemnify.
- (iii) In the event of:
 - (a) a Claim against an Insured which is not wholly covered by this Policy; and/or
 - (b) a Claim against an Insured being also made against one or more persons / organisations who are not Insureds;

the Insurer and the Insured shall then use their best endeavours to determine a reasonable allocation of Loss that is covered under this Policy and loss that is not covered on the basis of the relative legal and financial exposures.

- (iv) In the event of a dispute as to allocation under sub-paragraph (iii) above, such dispute shall be submitted to binding arbitration in accordance with the Arbitration Act 1996. Arbitration proceedings shall be commenced by the service of an Arbitration Notice upon the other party. The parties shall within 30 days agree one arbitrator who shall be a senior lawyer with at least 10 years' experience of the insurance industry, or in default by the Chairman of the Law Society of England & Wales. The seat of the arbitration shall be London. The rules for the conduct of the arbitration shall, subject to the provisions of the Arbitration Act 1996 as amended from time to time, be in the discretion of the arbitrator in order to achieve an expeditious and cost effective resolution.

3.5.6 **Takeovers and Mergers**

If during the Policy Period a Transaction takes place then:

- (i) the Organisation shown in Item 1 of the Schedule shall give written notice of such to the Insurer within 30 days of the effective date of such Transaction; and
- (ii) the cover provided under this Policy shall apply only to Wrongful Acts or conduct prior to the effective date of such Transaction.

3.5.7 Order of Payments

The Insurer shall pay, in the following order:

- (i) Non-Indemnifiable Loss;
- (ii) all other Loss within Insuring Agreement A;
- (iii) Loss paid by the Organisation on behalf of an Insured Person; and
- (iv) Loss on behalf of the Organisation.

The insolvency of any Organisation shall not relieve the Insurer of any of its obligations to prioritise payment of Loss under this Policy.

3.6. Discovery Period

- (i) If the Organisation shown in Item 1 of the Schedule refuses to renew this Policy, it may purchase the Discovery Period in Item 9(a) of the Schedule. If the Insurer refuses to renew this Policy, an Insured may purchase the Discovery Period in Item 9(b) of the Schedule.
- (ii) The Discovery Period shall only apply to:
 - (a) any Claim first made against the Insured before or during the Discovery Period, but only in respect of Wrongful Acts prior to expiry of the Policy Period; or
 - (b) any Investigation first commenced before or during the Discovery Period, but only in respect of conduct prior to expiry of the Policy Period.
- (iii) The right to purchase the Discovery Period as set out above may only be exercised by notice to the Insurer in writing within 30 days of expiration of the Policy Period, and is only effective upon payment of the additional premium. If such right is not exercised within such 30 day period then it shall lapse.
- (iv) The Insurer's offer of renewal terms, conditions, limits of liability or premium different from those of the expiring policy shall not constitute a refusal to renew.
- (v) The Insured shall not have the right to purchase the Discovery Period if a Transaction takes place.
- (vi) The Insurer shall not be liable to make any payment in respect of any Claim first made against the Insured or Investigation first commenced during the Discovery Period if at any time the Insured obtains any other directors and officers insurance policy covering in whole or in part the Discovery Period.

Section 4 – Employee Dishonesty

The terms and conditions of this Section apply only to this Section and shall not be construed to apply to any other Section.

4.3. Definitions Applicable to Section 4

- 4.3.1 Direct Financial Loss means financial loss sustained by the Organisation as a direct result of a single act or series of related, continuous or repeated acts of Employee Dishonesty.
- 4.3.2 Discovered or Discovery means the time at which the Organisation or one of its Senior Employees becomes aware of matters which may constitute a Direct Financial Loss. For the purpose of this definition, Discovery by an Insured will be deemed to be by all Insureds, unless such Insured was involved in Employee Dishonesty.
- 4.3.3 Employee means any person who in their regular service the Organisation compensates by wages, salaries, fees and/or commissions and who the Organisation has the right to direct and control in the performance of such service, including:
 - (a) any student, secondee, volunteer or temporary personnel supplied by outside agencies;
 - (b) any professionally qualified lawyer retained by the Organisation, or any employee of such lawyer;
- 4.3.4 Employee Dishonesty means an act or acts of fraud or dishonesty committed by an Employee acting alone or in collusion with others, which results in an actual personal gain for the Employee (other than salary, commission, fees, bonus, promotion, award, profit sharing, pension or any other employment benefit), and which such Employee knows will cause the Organisation to suffer financial loss. For the avoidance of doubt, recklessness or inadvertence do not constitute knowledge.
- 4.3.5 Investigator means any independent investigator, auditor, accountant or other consultant, who does not have a conflict of interest, selected by the Organisation with the prior written consent of the Insurer, such consent not to be unreasonably withheld, to establish the nature and extent of any Direct Financial Loss sustained by the Organisation.
- 4.3.6 Senior Employee means any Director or Officer, trustee or member of the governing body or committee, council member, or governor of the Organisation.

4.4 Exclusions Applicable to Insuring Agreement G

The Insurer shall not be liable to make any payment under this Section:

- 4.4.1 In respect of any Discovery before the commencement of the Policy Period;
- 4.4.2 For any Direct Financial Loss caused by or involving any person who owns or controls more than 10% of the issued share capital of the Organisation.
- 4.4.3 For any Direct Financial Loss for acts that occur after Discovery. The knowledge of an Employee who is involved in the Employee Dishonesty does not trigger this exclusion;
- 4.4.4 For any costs and expenses incurred by the Organisation in establishing the existence or value of a Direct Financial Loss, except as defined under clause 4.5.4;

- 4.4.5 For any Direct Financial Loss which results from the accessing and dissemination of any confidential information including but not limited to patents, trade marks, copyrights, customer information, computer programmes and trade secrets;
- 4.4.6 For any loss resulting directly or indirectly from any credit management; false accounting; or trading in Securities, commodities, futures, options, currencies, foreign exchange or the like; unless such loss is a direct result of Employee Dishonesty;

For the purpose of this Exclusion 'false accounting' means the creation, recording, or concealment of financial results or transactions with the intention of giving, or which results in, a misleading or deceptive statement of the financial condition of the Organisation;

- 4.4.7 In respect of a liability to others assumed by the Organisation under any contract or agreement, either oral or written;
- 4.4.8 For indirect or consequential loss, except for Investigator's fees as per clause 4.5.4;
- 4.4.9 For loss of potential income or profit and/or business interruption;
- 4.4.10 For any Direct Financial Loss based on, arising from or attributable to the activities of the Organisation in the United States of America or Canada;
- 4.4.11 For any element of Direct Financial Loss which, to be established, is solely dependent on a profit and loss computation, or on a comparison of inventory records with a physical count, provided that where such Direct Financial Loss results from the Employee Dishonesty of an identified Employee, a comparison of the inventory records with an actual physical count can be relied on as partial evidence in support of the Direct Financial Loss.

4.5 Conditions Applicable to Section 4

4.5.1 Limit of Liability

- (i) The amount shown in Item 3(ii) of the Schedule is the Insurer's maximum aggregate liability under this Section of the Policy irrespective of the number of claims under this Section of the Policy, the amount claimed, or when such claims are made under this Section of the Policy.
- (ii) The acts of one Employee or a group of Employees in collusion will constitute a single act of Employee Dishonesty, whether or not Direct Financial Loss is sustained in one or more than one Policy Period.
- (iii) The fees of the Investigator paid by the Insurer shall form part of and shall not be in addition to the Limit of Liability.

4.5.2 Retention

The Retention stated in Item 4(vii) of the Schedule shall be applied to each and every act of Employee Dishonesty. The Insurer shall pay Direct Financial Loss that exceeds the Retention. It shall not be applied to the Investigator's fees.

4.5.3 **Notification of Claims, Investigations and Reporting Circumstances**

- (i) It is a condition precedent to the Insurer's liability to make any payment in respect of a claim under this section of the Policy, that the Organisation gives written notice to the Insurer of such claim within 45 days of Discovery.
- (ii) Notice and all information shall be sent in writing to the Insurer at 200 Broomielaw, Glasgow G1 4RU (E-mail: claims@ace-ina.com)
- (iii) It is a condition precedent to the liability of the Insurer that the Organisation shall thereafter provide such full and accurate information as the Insurer may reasonably request, and comply with any reasonable time limits specified by the Insurer for the provision of such information.

4.5.4 **Investigation of Direct Financial Loss**

- (i) In the event of a Discovery for which cover may be provided under this Section, an Investigator shall be appointed jointly by the Organisation and the Insurer, and shall:
 - (a) Investigate the circumstances giving rise to any Direct Financial Loss; and
 - (b) Determine the amount of any Direct Financial Loss, and;
 - (c) Provide recommendations to the Organisation and to the Insurer as to how a similar Direct Financial Loss can be prevented in the future, and
 - (d) Provide a written report in duplicate simultaneously to the Organisation and to the Insurer on (a) and (b) above, which will be binding on the Organisation and the Insurer.
- (ii) The fees of such Investigator appointed jointly by the Organisation and the Insurer shall be borne by the Insurer, unless no covered Direct Financial Loss is established, in which case the Insurer and the Organisation will pay the reasonable costs and expenses of the Investigator equally.

4.5.5 **Valuation**

The basis of valuation of any Direct Financial Loss shall be determined by:

- (i) the lesser of the market value of Securities at the close of business on the date of Discovery, or the cost of replacing such Securities;
- (ii) the lesser of the cash value of other property at the date of Discovery or the cost of repairing or replacing it with property or material of similar value or quality. If the Organisation holds the property as a pledge or collateral for a loan then the cash value will be that which was agreed and recorded when the loan was made. If this value is not recorded then the unpaid portion of the loan plus accrued interest will be the cash value;
- (iii) the rate of exchange applying to a foreign currency as published in the Financial Times on the date of Discovery. If there is no such rate published on that day and the Organisation and the Insurer cannot mutually agree the appropriate rate of exchange, the rate will be determined by the current chairman of the Institute of Chartered Accountants (or such expert nominated by them);

4.5.6 **Recovery**

In the event of a recovery after the Insurer has made a payment for Direct Financial Loss then the net proceeds after the costs of making the recovery are deducted, will be distributed in the following order:

- (i) to the Organisation for any amount of Direct Financial Loss which exceeds the Limit of Liability;
- (ii) to the Insurer for all payments made; and
- (iii) to the Organisation for the amount paid as the Retention.

4.5.7 **Cancellation**

The following provisions apply with regard to cancellation of cover under this Section:

- (i) Cover may be cancelled if either the Organisation or the Insurer gives 30 days written notice of cancellation.
- (ii) Cover will be cancelled automatically if an insolvency petition is presented, an order made or a resolution passed to wind up or appoint an administrator in respect of the Organisation, or if a receiver is appointed over the whole or part of its assets. Cancellation takes effect as from the date of the relevant petition, order, resolution or appointment.
- (iii) If cover is cancelled in respect of the Organisation, the Insurer will return a pro rated amount of premium unless a Discovery has occurred before the cancellation takes effect.
- (iv) Where cancellation takes place as described above, cover prior to cancellation is not affected. Accordingly, subject to all the applicable terms of this Policy, and in particular to those dealing with Discovery, acts of Employee Dishonesty prior to the cancellation of cover under this Section will remain covered.

Data Protection

ACE European Group Limited and its group companies ('ACE') will use the information supplied during the formation and performance of this Policy for policy administration, customer services, the payment of claims and the production of management information for business analysis. We will keep this information for a reasonable period.

Where sensitive personal data has been disclosed, including any medical or criminal record information, ACE will also use this information for these purposes. ACE are entitled to ask about criminal convictions in relation to insurance risks. There is no obligation to provide ACE with details of any convictions which are spent under the terms of the Rehabilitation of Offenders Act 1974. ACE may also transfer certain information to countries that do not provide the same level of data protection as the UK for the above purposes. A contract will be in place to ensure the information transferred is protected.

ACE may record telephone calls for quality control, fraud prevention and staff training purposes.

When personal or sensitive data is supplied to ACE about third parties other than the Insured, both during the formation and performance of this policy, ACE assumes that those third parties consent to the supply of this information to ACE, to ACE processing this data, including sensitive personal data, and to the transfer of their information abroad. ACE will also assume that the supplier of the information is authorised to receive, on their behalf, any data protection notices.

ACE may share personal and sensitive personal information with the following organisations for the purposes described above:

- our connected companies, service providers, agents and subcontractors including loss adjusters and claims investigators;
- our reinsurers who use this information to assess the terms of specific policies and to administer our insurance policies generally;
- other insurance companies about other insurance policies you may have;
- the police, other insurance companies, fraud reference agencies and other representative bodies in relation to the prevention and detection of fraudulent claims or as part of our money laundering checks.

We work with the police, other insurance companies, fraud reference and detection agencies and other representative bodies to prevent and detect fraudulent or exaggerated claims. As part of this we will share information about your claims with providers of software designed to assist in the detection of fraudulent claims. We may also use commercially available databases to prevent money laundering.

Other companies may contact these bodies for information to help them make decisions about insurance or similar services they provide to you.

Individuals whose information has been supplied to ACE are entitled to a copy of that information on payment of a fee and to have any inaccuracies corrected. Such information is available by contacting the Data Protection Officer at 100, Leadenhall Street, London EC3A 3BP.

We do not use personal information for marketing purposes, nor do we share it with any other Organisation for marketing purposes, unless consent to do so has been received in writing from you.

Complaints Procedure

We are dedicated to providing you with a high quality service, and want to maintain this at all times. If you feel that we have not offered you a first class service or you wish to make an enquiry regarding this insurance, please contact the intermediary who arranged this insurance for you or the manager of the branch of the Organisation which issued your policy.

If you are still not satisfied, you may write to our Chief Executive of the Organisation at ACE's head office – the address is shown on your policy.

ACE European Group Limited is a member of the Financial Ombudsman Service (FOS) and in limited circumstances, you can approach them for assistance if you remain dissatisfied with our response. Those limited circumstances are where the policy is taken out by:

- a) An individual
- b) A business with an annual group turnover of less than GBP1,000,000
- c) A charity with annual income of less than GBP1,000,000 and
- d) A trustee of a trust that has a net asset value of less than GBP1,000,000

The FOS's contact details are FOS, South Quay, 183 Marsh Wall, London, E14 9SR, Phone: 0845 080 1800

e-mail: enquiries@financial-ombudsman.org.uk

Financial Services Authority

ACE European Group Limited, UK Head Office, 100 Leadenhall Street, London EC3A 3BP, authorised and regulated by the Financial Services Authority, registration number FRN202803. Full details can be found on the FSA's Register by visiting www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234