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elite IV

# Directors and Officers Insurance Policy

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## **Directors & Officers elite IV Insurance Policy**

### **CLAIMS MADE POLICY**

In consideration of the payment of the premium shown at Item 9 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 and with the Company as follows:

#### **1. Insuring Agreement**

- A. The Insurer will pay on behalf of the Insured all Loss resulting from a Claim first made during the Policy Period against an Insured for Non-Indemnifiable Loss.
- B. The Insurer will pay on behalf of the Company all Loss resulting from a Claim first made during the Policy Period against an Insured where the Company has paid such Loss.
- C. The Insurer will pay all Legal Representation Expenses in respect of an Investigation on behalf of the Insured and all Legal Representation Expenses paid by the Company on behalf of the Insured.

**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 Company requiring legal advice in respect of his or her role as a Director or Officer of the Company 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.**

## 2. Extensions

### 2.1 Additional Excess Limit for Non-Indemnifiable Loss

Subject to the Aggregate Excess Limit in Item 14(b) of the Schedule, the Insurer will pay to or on behalf of each director of the company in Item 1 of the Schedule or a non-executive director of any Subsidiary, Non-Indemnifiable Loss up to the Individual Additional Excess Limit in Item 14(a) of the Schedule provided that:

- (i) the Limit of Liability; and
- (ii) any other directors and officers liability policy which covers any part of that Loss; and
- (iii) all other indemnification available to any director,

has been exhausted.

The Individual Additional Excess Limit in Item 14(a) of the Schedule is part of and not in addition to the Aggregate Excess Limit in Item 14 (b) of the Schedule.

The Aggregate Excess Limit in Item 14(b) of the Schedule is the Insurer's maximum aggregate liability for all Loss under this Extension for all directors irrespective of the number of claims under this Policy, the amount claimed or the number of directors who claim. The Aggregate Excess Limit in Item 14(b) of the Schedule is in addition to, and not part of, the Limit of Liability.

### 2.2 Subsidiaries

- (i) If during the Policy Period the Company acquires an entity so that it becomes a Subsidiary that:
  - (a) has total assets less than 35% of the most recent audited consolidated total assets of the company shown in Item 1 of the Schedule; and
  - (b) is not domiciled or incorporated and has no listing of its Securities in the United States of America ; or
- (ii) If during the Policy Period the Company 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) has no listing of its Securities in the United States of America ; orthen 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.
- (iii) 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 .
- (iv) If the Company 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.
- (v) The Insurer shall only be liable for Loss in respect of Wrongful Acts or conduct whilst an entity is a Subsidiary.

### 2.3 Emergency Defence Costs and Legal Representation Expenses

If it is not possible for the Insured to obtain the Insurer's consent prior to the incurring of Defence Costs, Legal Representation Expenses, Bail Bond Costs or Public Relation 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 or sub-limit of liability as applicable or GBP50,000 whichever is the higher.

**2.4 Retired Director or Officer 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 any Retired Director or Officer 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.

**2.5 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.

**2.6 Outside Directorship Extension**

- (i) This Policy shall extend to include an Insured who at the specific request of the Company 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 under such policy.

**2.7 Management Buy-outs**

In the event of a Subsidiary of the Company ceasing to be owned by the Company as a result of a buy-out by existing management the Insurer agrees to maintain this Policy in respect of such Subsidiary for a period of 30 days from the date of the buy-out for Wrongful Acts committed subsequent to the buy-out. This Extension shall not apply in circumstances where there is other insurance in force which provides cover in respect of such Wrongful Acts.

**2.8 Tax Extension**

This Policy shall extend to include an Insured's Loss arising from their personal liability for unpaid taxes where the Company has become insolvent except to the extent that such liability arises from the wilful intent of the Insured to breach any statutory duty governing the payment of taxes. Such cover shall apply up to the sub-limit shown in Item 13 of the Schedule.

**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.

**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.

**2.11 Prosecution Costs Extension**

This Policy is extended to include Prosecution Costs arising from a Claim or Investigation first made during the Policy Period.

**2.12 Foreign Corrupt Practices Act**

This Policy is extended to include civil fines and penalties imposed pursuant to Section 78ff (c) or Section 1 78dd – 2(g) (2) of the Foreign Corrupt Practices Act or any similar legislation in any other jurisdiction.

The sub-limit of liability under this Extension shall be USD100,000 per Insured. The Insurer's total aggregate liability for cover under this Extension shall not exceed USD1,000,000 irrespective of the number of claims under this Policy, the amount claimed or the number of Insureds who claim under this Extension.

**2.13 Occupational Health and Safety Extension**

Notwithstanding Exclusion 4.7 this Policy extends to include all Defence Costs and Legal Representation Expenses arising from any Claim or Investigation 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.

**2.14 Deprivation of Assets Extension**

This Policy extends to include Deprivation of Assets Expenses arising from a Claim or Investigation first made during the Policy Period.

The sub-limit of liability under this Extension shall not exceed GBP100,000 per Insured. The Insurer's total aggregate liability for cover under this Extension shall not exceed GBP300,000 irrespective of the number of claims under this Policy, the amount claimed or the number of Insureds who claim under this Extension.

**2.15 Pre-Investigation Costs**

This Policy shall extend to pay the reasonable and necessary fees, costs and expenses of each Insured (but not including any remuneration of any Director or Officer or employee of the Company) incurred directly with respect to:

- (i) any Pre-Investigation;
- (ii) preparing any written notice or reports to any official body in connection with any Pre-Investigation; and
- (iii) preparing for and attending an Investigation;

Any amounts recovered by the Insurer (net of the Insurers reasonable expenses associated with such recovery) following a paid Claim shall proportionally reduce the impairment of the Limit of Liability.

**2.16 Civil Fines and Penalties Extension**

This Policy is extended to include civil fines and penalties where insurable by law.

The sub-limit of liability under this Extension shall be GBP25,000 per Insured. The Insurer's total aggregate liability for cover under this Extension shall not exceed GBP100,000 irrespective of the number of claims under this Policy, the amount claimed or the number of Insureds who claim under this Extension.

**3. Definitions**

3.1 Bail Bond Costs means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an Insured'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.

3.2 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.

(v) any Extradition Proceeding.

3.3 Company means the company shown in Item 1 of the Schedule and any Subsidiary.

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 15 of the Schedule.

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.

3.6 Deprivation of Assets Expenses shall mean the payment of the following services directly to the provider of such services in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an Insured or creating a charge over real property or personal assets of the Insured during the Policy Period:

(i) Schooling;

(ii) Housing;

(iii) Utilities;

(iv) Personal Insurances.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

Such expenses will be payable after 30 days following the event above for a period of up to 12 months.

3.7 Director or Officer means a director or officer of the Company including the equivalent position in any other jurisdiction.

3.8 Discovery Period means the periods in Item 10 of the Schedule from the date on which the Policy Period expires.

3.9 Employee means:

(i) an employee of the Company acting in a managerial or supervisory capacity; or

(ii) an employee of the Company for an Employment Related Wrongful Act; or

(iii) an employee of the Company, in respect of any Claim or Investigation in which such employee is named as a co-defendant or is required to attend an Investigation with any Director or Officer.

3.10 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 Company.

3.11 Extradition Proceeding means:

(i) a request for extradition of an Insured, a warrant for arrest in respect of an Insured 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.

- 3.12 Insured means a natural person who was, now is or becomes during the Policy Period:
- (i) a Director or Officer;
  - (ii) a Shadow Director;
  - (iii) an Employee;
  - (iv) any lawful spouse of a Director or Officer or Employee, but only where the Claim results from the Wrongful Act of such Director or Officer or Employee;
  - (v) the estate, heir or legal representative of a deceased Director or Officer or Employee;
  - (vi) the legal representative of a Director or Officer or Employee in the event of the incapacity, insolvency or bankruptcy of such Director or Officer or Employee;
  - (vii) all approved persons who perform controlled functions numbered 1 to 20 specified by the Financial Services Authority in its Table of Controlled Functions in its Supervision Manual at 10.45 in Block 3 of its Handbook, pursuant to Part V of the Financial Services and Markets Act 2000.
  - (viii) a prospective director in any listing particulars or prospectus issued by the Company.
  - (ix) a lawyer employed by the Company who in their capacity as such must comply with Sarbanes-Oxley Act of 2002.

provided that Insured does not include an external auditor.

3.13 Insurer means ACE EUROPEAN GROUP LTD.

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

3.15 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 of the Company) 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.

3.16 Limit of Liability means the amount stated in Item 3 of the Schedule.

3.17 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) Defence Costs;
- (iii) Legal Representation Expenses;
- (iv) Bail Bond Costs;
- (v) Crisis Costs;
- (vi) Deprivation of Assets Expenses;
- (vii) Prosecution Costs;
- (viii) Public Relations Expenses;
- (ix) Reputation Protection Expenses;
- (x) 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 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 2.8;

- 3.18 Non-Indemnifiable Loss means Loss where a Company is unable to indemnify an Insured due to:
- (i) legal prohibition; or
  - (ii) a prohibition in the Articles of Association, charter, bylaws, contract or similar documents of such Company; or
  - (iii) insolvency under section 123 of the Insolvency Act 1986 or the equivalent law in any other jurisdiction.
- 3.19 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.
- 3.20 Official Body means any regulator, disciplinary body, criminal authority, government body, government agency, official trade body, or any other body that is empowered by statute to investigate an Insured or the Company.
- 3.21 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;
- 3.22 Policy means this policy and any endorsement thereto.
- 3.23 Policy Period means the period of time shown in Item 2 of the Schedule of this Policy.
- 3.24 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.
- 3.25 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.
- 3.26 Pre-Investigation means
- (i) any raid or on-site visit to any Company by an Official Body first occurring during the Policy Period that involves the production, review, copying or confiscation of records or interviews of any Insured subject to the Investigation; or
  - (ii) any formal notification by any Company to an Official Body first given during the Policy Period where the Company reasonably considers that:
    - (a) a material breach of the Company's legal or regulatory duty has occurred, may have occurred or may occur in the foreseeable future; or
    - (b) an event has occurred which the Company reasonably considers is an event of which the Official Body expects notice as set out in the Official Body's rules and regulations
- 3.27 Proposal means the proposal form submitted by the Company and/or any Insured in applying for this Policy and all information and documentation accompanying it.
- 3.28 Proposal means the proposal form submitted by the Company and/or any Insured in applying for this Policy and all information and documentation accompanying it.
- 3.29 Prosecution Costs means the legal and other professional fees, costs and expenses, incurred by an Insured with the prior written consent of the Insurer (which shall not be unreasonably delayed or withheld) to bring legal proceedings to obtain the discharge or revocation of:
- (i) an order disqualifying an Insured from holding office as a company director; or
  - (ii) an interim or interlocutory order:
    - (a) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of such Insured; or
    - (b) a charge over real property or personal assets of the Insured; or
  - (iii) an order of a court imposing a restriction of the Insured's liberty; or

- (iv) the deportation of an Insured following revocation of otherwise proper, current and valid immigration status for any reason other than the Insured's conviction for a crime.
- 3.30 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 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. The sub-limit of liability for all Public Relations Expenses is the sub-limit specified in Item 16 of the Schedule.
  - 3.31 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 17 of the Schedule.
  - 3.32 Retired Director or Officer means any Insured (other than one who has been disqualified from holding office as a company director) who has voluntarily ceased to act in the capacity of an Insured during the Policy Period.
  - 3.33 Securities means any equity or debt instrument issued by the Company.
  - 3.34 Shadow Director means a Director or Officer or employee of the Company 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 Company.
  - 3.35 Subsidiary means any entity that the company shown in Item 1 of the Schedule directly or indirectly:
    - (a) controls a majority of the voting rights; or
    - (b) controls the right to appoint or remove a majority of its board of Directors; or
    - (c) holds more than half of the issued share capital; or
    - (d) any joint venture or entity over which the company in Item 1 of the Schedule directly or indirectly exercises effective management control.
  - 3.36 Transaction means any one of the following events:
    - (i) the company shown in Item 1 of the Schedule merges with or consolidates into any other entity; or
    - (ii) the company 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 company 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 company shown in Item 1 of the Schedule.
  - 3.37 Wrongful Act means any actual or alleged, breach of trust, error, omission, misstatement, misleading statement, neglect or breach of duty or any other matter claimed against an Insured whilst acting in the capacity of an Insured, including any violation of the Companies Act 2006, Sarbanes-Oxley Act of 2002 or any equivalent law, rule or regulation in any other jurisdiction, and an Employment Related Wrongful Act.

#### **4. Exclusions**

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

- 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;

- 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 Company, an Outside Entity or an Insured 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;
  - 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;
  - 4.4 based on, arising from or attributable to any Claim brought or maintained by or on behalf of the Company or Outside Entity in the United States of America or its territories, except:
    - (i) any Claim against any Insured:
      - (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 Company or Outside Entity without the solicitation or participation of an Insured, Company 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.
  - 4.5 based on, arising from or attributable to any Claim or Investigation brought or maintained against an Insured in their capacity as a trustee of any pension, profit sharing, health, welfare or any other employee benefit programme established by the Company 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;
  - 4.6 based on, arising from or attributable to any public offering of any Securities during the Policy Period, provided that this Exclusion shall not apply where the total value of such placement or offering is equal to or lower than the sum shown at Item 8 of the Schedule;
  - 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.
- 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 Company for a Claim or Investigation brought outside the United States of America against an Insured, up to the sub-limit shown at Item 12 of the Schedule; or
    - (iii) any Claim instigated by any shareholder of the Company on their own behalf or in

the name of the Company without the solicitation or participation of an Insured or the Company unless legally compelled to do so.

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

## **5. Conditions**

### **5.1 Limit of Liability**

- (i) The amount shown in Item 3 of the Schedule is the Insurer's maximum aggregate liability under this Policy, except cover under Extension 2.1, irrespective of the number of claims under this Policy, the amount claimed, the number of Insureds who claim, or when such claims are made under this Policy.
- (ii) Any sub-limit specified in this Policy shall be the Insurer's maximum aggregate liability under such sub-limit irrespective of the number of claims under this Policy, the amount claimed or the number of Insureds who claim. Any sub-limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule.
- (iii) If a single Wrongful Act or act or a series of related Wrongful Acts or acts give rise to a claim under this Policy then all claims made after the expiry of this Policy arising out of such similar or related Wrongful Acts or acts shall be treated as though first made during this Policy Period.

### **5.2 Retention**

- (i) The retention shown in Item 4 of the Schedule shall not apply to a Non-Indemnifiable Loss. The retention shall be paid by the Company and the Insurer shall have no obligation to pay any amount within such retention.
- (ii) If the Company fails to indemnify an Insured 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 Company shall pay the amount of the retention to the Insurer.
- (iii) In the event an Insured is required to repay all or part of the retention to the Company in accordance with sections 234(3) and 205 of the Companies Act 2006 the Insurer agrees to pay such amount to the Company on behalf of the Insured.

### 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 5.4(iii) is applicable, that the Company or the Insured gives written notice to the Insurer of such Claim as soon as practicable. For all other claims under this Policy the Company or the Insured shall give written notice to the Insurer as soon as practicable but this shall not be a condition precedent.

In event of expiry of the Policy Period, notification must be given in any event no later than 90 days after the expiration of the Policy Period, or, in relation to a Claim first made against the Insured or Investigation first commenced during the Discovery Period if applicable no later than 30 days after expiry of the Discovery Period.

- (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 Company or any Insured shall become aware of any circumstances that might give rise to a Claim or Investigation 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.

### 5.4 Conduct of Proceedings

- (i) Other than a Claim falling within clause 5.4(iii), it is the duty of the Insured, not the Insurer, to defend any Claim or Investigation against him or her notified under this Policy. The Insurer, however, will have the right to effectively associate with any Insured in respect of any Claim or Investigation.
- (ii) The Insurer will accept as reasonable and necessary the retention of separate legal representation to the extent required by a material conflict of interest between Insured's and/or the Company.
- (iii) The Insurer shall have the right to defend any Claim brought against an Insured by or on behalf of any:
  - (a) Company; 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 Company or Outside Entity without the solicitation or participation of an Insured, Company 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 or the Company in relation to such Claim.

- (iv) Neither the Company nor the Insured shall do anything which could prejudice the Insurer in respect of a claim made under this Policy.
- (v) The Company or the Insured must 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).

- (vi) The Company and each Insured must give the Insurer and any representatives appointed by the Insurer all information they reasonably require, and fully cooperate and assist in the conduct of any investigation into any claim under this Policy.
- (vii) If there is a dispute between the Insurer and the Insured and/or the Company 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 and/or the Company 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.

#### 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 Company 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 the Company and/or one or more persons who are not Insureds;

the Insurer and the Insured (and/or the Company if applicable) 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, the Insurer, Insured (or the Company if applicable) agree to submit such dispute 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.

#### 5.6 **Takeovers and Mergers**

If during the Policy Period a Transaction takes place then:

- (i) the company 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 committed or Investigations in respect of conduct prior to the effective date of such Transaction.

#### 5.7 **Other Insurance**

If an Insured or the Company 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, the Insurer shall not be liable for Loss 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.

**5.8 Subrogation**

In the event the Insurer makes any payment under this Policy, the Insurer shall be subrogated to all of the Company's and any Insured's rights of recovery, and the Company and the Insured shall co-operate with the Insurer in securing such rights. Neither the Company nor any Insured shall 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.

**5.9 Authorisation**

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

**5.10 Non-assignment**

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

**5.11 Policy Interpretation**

This Policy shall be governed by English law, and any dispute regarding the interpretation of this Policy, except as provided under clause 5.5, shall be subject to the exclusive jurisdiction of the courts of England and Wales.

**5.12 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.

**5.13 Order of Payments**

The Insurer shall:

- (i) first pay Non-Indemnifiable Loss; and
- (ii) then pay Loss paid by the Company on behalf of an Insured; and
- (iii) if additional cover is provided to the Company by endorsement to this Policy, other Loss incurred by the Company.

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

**6. Discovery Period**

- (i) If the company shown in Item 1 of the Schedule refuses to renew this Policy, it may purchase the Discovery Period in Item 10(a) of the Schedule.  
If the Insurer refuses to renew this Policy, the company shown in Item 1 of the Schedule or an Insured may purchase the Discovery Period in Item 10(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 committed prior to expiry of the Policy Period; or
  - (b) any Investigation first commenced before or during the Discovery Period, but only in respect of actual or alleged conduct undertaken prior to expiry of the Policy Period.
- (iii) The right to purchase the Discovery Period as set out above must 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.
- (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 company or an 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 Company obtains any other directors and officers insurance policy covering in whole or in part the Discovery Period.

**7. Severability**

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

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 who is the subject of a claim under this Policy shall be imputed to the Company for the sole purposes of determining if cover is available for indemnifiable Loss with respect to such Insured.

## **Endorsement 1 – Corporate Legal Liability**

By way of endorsement to the Policy, the parties are hereby agreed as follows (subject otherwise to all other terms, conditions, limits of liability and exclusions of the Policy):

### **1. Insuring Agreement**

- D. The Insurer will pay on behalf of the Company all Loss resulting from a Claim first made during the Policy Period against the Company.
- E. The Insurer will pay on behalf of the Company all Legal Representation Expenses in respect of an Investigation under the Health and Safety at Work Act 1974.
- F. The Insurer will pay on behalf of the Company all Legal Representation Expenses in respect of an Investigation under the Corporate Manslaughter and Corporate Homicide Act 2007. The sub-limit of liability for all payments under this Insurance Agreement is specified in Item 18 (b) of the Schedule.
- G. The Insurer will pay on behalf of the Company all Loss resulting from an Employment Claim first made during the Policy Period against the Company. The sub-limit of liability for all payments under this Insurance Agreement is specified in Item 18 (c) of the Schedule.

### **2. Extensions**

For the purposes of this endorsement only, the following extensions are added to the extensions of the Policy.

- 2.1 This Policy shall extend to include Public Relation Expenses arising from an Investigation first commenced during the Policy Period under the Corporate Manslaughter and Corporate Homicide Act 2007. Cover under this extension will not be used to comply with a Publicity Order pursuant to s10 of the Corporate Manslaughter and Corporate Homicide Act 2007. The sub-limit of liability for all payments under this Extension is specified in Item 18 (g) of the Schedule.
- 2.2 Notwithstanding Exclusion 4.12 this Policy extends to include all Defence Costs arising from any Claim 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.
- 2.3 If any party other than an Insured enters into any agreement with any third party entity fraudulently representing themselves as any Company, then the Insurer shall pay any reasonable fees, costs and expenses incurred by such Company in establishing that such fraudulent misrepresentation has occurred, should the third party entity seek to enforce such agreement against such Company. The sub-limit of liability for all payments under this Extension is specified in Item 18(k) of the Schedule.
- 2.4 Court Attendance Costs  
This Policy shall extend to pay the following rates per day for each day on which the attendance of a representative of the Company is required in court in connection with any covered Claim, up to the sub limit referred to in item 18(l) of the schedule:
  - (i) for any Director or Officer or Employee of the Company: £250
  - (ii) any other Insured not referred to in (i) above: £150

### **3. Definitions**

For the purposes of this endorsement only, the following definitions are added to the definitions of the Policy.

- 3.1 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.
- 3.2 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,
- first made during the Policy Period against the Company, alleging a Wrongful Act.
- 3.2 Employment Claim means
- (iii) any written demand; or
  - (iv) any civil or arbitral proceeding; or
  - (iii) any criminal prosecution; or
  - (iv) any formal administrative or regulatory proceeding,
- first made during the Policy Period against the Company, alleging an Employment Related Wrongful Act.
- 3.4 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 Company occurring on or after the retroactive date show in Item 18 (e) of the Schedule.
- 3.5 Insured is amended to mean the Company
- 3.6 Legal Representation Expenses in respect of Insuring Agreement E and F means the reasonable legal costs for which the Company is legally liable and which are incurred with the consent of the Insurer (but not including wages, salaries or other remuneration of any Director or Officer or employee of the Company) for legal representation in relation to an Investigation with respect to the Health and Safety at Work Act 1974 and the Corporate Manslaughter and Corporate Homicide Act 2007.
- 3.6 Loss means all amounts which the Company is legally obligated to pay including but not limited to:
- (i) any damages awarded, judgments entered, settlements reached including plaintiff's legal costs;
  - (ii) Defence Costs;
  - (iii) Legal Representation Expenses;
  - (iv) Public Relations Expenses;

Loss does not include:

- (a) fines or penalties imposed by law, or any matter deemed uninsurable under the law applicable to this endorsement;
  - (b) Benefits or any form of non-monetary or injunctive relief arising out of an Employment Related Wrongful Act;
  - (c) any amount the Company would have been liable for in the absence of an Employment Related Wrongful Act
- 3.7 Public Relations Expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which the Company may, in the reasonable exercise of its discretion, engage with the 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 an Investigation under the Corporate Manslaughter and Corporate Homicide Act 2007.
- 3.8 Wrongful Act means any actual or alleged, breach of trust, error, omission, misstatement, misleading statement, neglect or breach of duty by the Company occurring on or after the retroactive date show in Item 18 (e) of the Schedule.

#### 4. Exclusions

For the purposes of this endorsement only, the following exclusions are added to the exclusions of the Policy.

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

- 4.1 based on, arising from or attributable to:
- (i) any dishonest or fraudulent act or omission or any intentional breach of the law by the Company.
  - (ii) any profit or advantage gained by the Company to which it 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 the Company or Insured that the relevant conduct occurred;
- 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 official investigations) involving the Company, an Outside Entity or an Insured and issued or otherwise begun before the date shown at Item 18(e) 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;
- 4.3 based on, arising from or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce;
- 4.4 based on, arising from or attributable to the actual or intended private placement or public offering of any Securities during the Policy Period;
- 4.5 for the performance or failure to perform professional services for any person or any act, error or omission relating thereto;

- 4.6 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;
- 4.7 based on, arising from or attributable to any actual or alleged contractual liability assumed by the Company under any contract or agreement;
- provided that this exclusion shall not apply to:
- (i) a Claim brought against the Company alleging an Employment Related Wrongful Act; or
  - (ii) Defence Costs for a Claim brought against the Company, up to the sub-limit shown in item 18 (h) of the Schedule
- 4.8 based on, arising from, attributable to Pollution;
- provided that this exclusion shall not apply to:
- (i) any Claim against the Company instigated by a shareholder or group of shareholders of the Company directly or in the name of the Company without the solicitation, voluntary assistance or participation of any Insured; or
  - (ii) Defence Costs for a Claim brought against the Company, up to the sub-limit shown in item 18 (i) of the Schedule
- ;
- 4.9 for direct or indirect tax obligations of any kind;
- 4.10 based on, arising from or attributable to any pension, profit sharing, health, welfare or any other employee benefit programme established by the Company or for any actual or alleged breach of the Company'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;
- 4.11 based on, arising from or attributable to any Claim brought or maintained by or on behalf of the Company;

The Insurer shall not be liable to make any payment under Insuring Agreement D only:

- 4.12
- (i) for any bodily injury, mental illness, emotional distress, injury to feelings, sickness, disease or death of any person.
  - (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) emotional distress and/or injury to feelings resulting from an Employment Related Wrongful Act.
  - (b) Defence Costs for a Claim brought against the Company, up to the sub-limit shown in item 18 (j) of the Schedule

## 5. Conditions

For the purposes of this endorsement only, the following conditions are added to the conditions of the Policy.

5.1 **Limit of Liability**

- (i) The Aggregate Limit in Item 18 (a) of the Schedule is the Insurer's maximum aggregate liability for all Loss under this endorsement for all entities within the definition of Company irrespective of the number of claims under this endorsement, the amount claimed or the number of entities who claim. The Aggregate Limit in Item 18(a) of the Schedule is in addition to, and not part of, the Limit of Liability as shown in item 3 of the Schedule.
- (ii) Any sub-limit specified in this endorsement shall be the Insurer's maximum aggregate liability under such sub-limit irrespective of the number of claims under this endorsement, the amount claimed or the number of entities within the definition of Company who claim. Any sub-limit shall be part of and not in addition to the Limit of Liability shown in Item 18 (a) of the Schedule.

5.7 **Other Insurance**

If the Company 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, the Insurer shall not be liable for Loss 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.

**6. Schedule**

For the purposes of this endorsement only, the following is hereby added to the Schedule:

<i>Item 18 (a).</i>	<b>Limit of Liability in the aggregate:</b>	GBP 250,000
<i>Item 18 (b).</i>	<b>Sub-limit of Liability for Insuring Agreement F:</b>	GBP 100,000
<i>Item 18 (c).</i>	<b>Sub-limit of Liability for Insuring Agreement G:</b>	GBP 250,000
<i>Item 18 (d).</i>	<b>Retention:</b>	
	(i)	Claims falling under the jurisdiction of the courts in the United States of America or settled by compromise in the United States of America: <ul style="list-style-type: none"><li>(a) alleging an Employment Related Wrongful Act: USD 25,000</li><li>(b) for all other Claims: USD 25,000</li></ul>
	(ii)	Claims falling anywhere in the world other than under the jurisdiction of the courts in the United States of America or settled by compromise in the United States of America: <ul style="list-style-type: none"><li>(a) alleging an Employment Related Wrongful Act: GBP 2,500</li><li>(b) for all other Claims: GBP 2,500</li></ul>

<i>Item 18 (e).</i>	<b>Retroactive Date:</b>	N/A
<i>Item 18 (f).</i>	<b>Pending or Prior Litigation Date:</b>	N/A
<i>Item 18 (g).</i>	<b>Sub-limit of Liability for Public Relation Expenses</b>	GBP 25,000
<i>Item 18 (h).</i>	<b>Breach of Contract Defence Costs</b> Sub-limit of Liability in the aggregate	GBP100,000
<i>Item 18 (i).</i>	<b>Pollution Defence Costs</b> Sub-limit of Liability in the aggregate	GBP100,000
<i>Item 18 (j).</i>	<b>Bodily Injury Property Damage Costs</b> Sub-limit of Liability in the aggregate	GBP50,000
<i>Item 18 (k).</i>	<b>Identity Theft Cover</b> Sub-limit of Liability in the aggregate	GBP250,000
<i>Item 18 (l).</i>	<b>Court Attendance Costs</b> Sub-limit of Liability in the aggregate	GBP20,000

## **Endorsement 2 – Employee Dishonesty**

By way of endorsement to the Policy, the parties are hereby agreed as follows (subject otherwise to all other terms, conditions, limits of liability and exclusions of the Policy):

### **1. Insuring Agreement**

- H. The Insurer will pay on behalf of the Company all Direct Financial Loss which is first Discovered, sustained and notified to the Insurer during the Policy Period. The Insurer's total aggregate liability for cover under this Insuring Agreement shall not exceed GBP75,000 irrespective of the number of claims under this Policy.

### **3. Definitions**

For the purposes of this endorsement only, the following definitions are added to the definitions of the Policy.

- 3.1 Direct Financial Loss means financial loss sustained by the Company as a direct result of a single act or series of related, continuous or repeated acts of Employee Dishonesty.
- 3.2 Discovered or Discovery means the time at which the Company 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.
- 3.3 Employee means any person who in their regular service the Company compensates by wages, salaries, fees and/or commissions and who the Company 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 Company, or any employee of such lawyer;
- 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 Company to suffer financial loss. For the avoidance of doubt, recklessness or inadvertence do not constitute knowledge.
- 3.5 Investigator means any independent investigator, auditor, accountant or other consultant, who does not have a conflict of interest, selected by the Company 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 Company.
- 3.6 Senior Employee means any Director or Officer, trustee or member of the governing body or committee, council member, or governor of the Company.

### **4. Exclusions**

For the purposes of this endorsement only, the following exclusions are added to the exclusions of the Policy.

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

- 4.1 In respect of any Discovery before the commencement of the Policy Period;
- 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 Company.
- 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 For any costs and expenses incurred by the Company in establishing the existence or value of a Direct Financial Loss, except as defined under clause 5.4;
- 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;
- 4.6 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 Company;
- 4.7 In respect of a liability to others assumed by the Company under any contract or agreement, either oral or written;
- 4.8 For indirect or consequential loss, except for Investigator's fees as per clause 5.4;
- 4.9 For loss of potential income or profit and/or business interruption;
- 4.10 For any Direct Financial Loss based on, arising from or attributable to the activities of the Company in the United States of America or Canada;
- 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.

## 5 Conditions

For the purposes of this endorsement only, the following conditions are added to the conditions of the Policy.

### 5.1 Limit of Liability

- (i) The sub-limit of GBP75,000 is the Insurer's maximum aggregate liability under this endorsement irrespective of the number of claims under this endorsement, the amount claimed, or when such claims are made under this endorsement of the Policy.  
This sub-limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule.
- (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.

5.2 **Retention**

The Retention stated in Item 19 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.

### 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 endorsement of the Policy, that the Company 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 Company 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.

### 5.4 **Investigation of Direct Financial Loss**

- (i) In the event of a Discovery for which cover may be provided under this Endorsement, an Investigator shall be appointed jointly by the Company 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 Company 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 Company and to the Insurer on (a) and (b) above, which will be binding on the Company and the Insurer.
- (ii) The fees of such Investigator appointed jointly by the Company and the Insurer shall be borne by the Insurer, unless no covered Direct Financial Loss is established, in which case the Insurer and the Company will pay the reasonable costs and expenses of the Investigator equally.

### 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 Company 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 Company 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);

## 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 Company 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 Company for the amount paid as the Retention.

## 5.7 **Cancellation**

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

- (i) Cover may be cancelled if either the Company 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 Company, 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 Company, 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 Endorsement will remain covered.

## 6. **Schedule**

For the purposes of this endorsement only, the following is hereby added to the Schedule:

### ***Item 19. Employee Dishonesty Retention:***

For all Claims:

GBP 2,500

## 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 company 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 company which issued your policy.

If you are still not satisfied, you may write to our Chief Executive of the company 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](mailto: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](http://www.fsa.gov.uk/register) or by contacting the FSA on 0845 606 1234