

**UNCERTIFIED SCHEDULE**

The Insured:	Certificate Number:
	Contract Number:
Address:	
The Underwriters:	100% certain Underwriters at Lloyd's of London
The Inception Date:	00:01 a.m. LST on
The Expiry Date:	00:01 a.m. LST on
Total Payable:	
Broken down as follows:	
Premium:	
Policy Administration Fee:	
Limit of Liability:	An <b>aggregate limit of liability</b> of including <b>costs and expenses</b>
Excess:	each and every claimant including <b>costs and expenses</b>
Business Activities:	
Legal Action:	Worldwide
U.S. Classification:	Non Regulated
Retroactive Date:	
Conditions:	
Claims Managers:	CFC Underwriting Ltd.
<i>Dated in London on 26<sup>th</sup> January 2005</i>	

## **TECHNOLOGY PROFESSIONAL INDEMNITY**

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide, subject always to **our** receipt of the Premium. This Policy consists of and must be read together with the Schedule and any Endorsements. This Policy is not complete unless it is signed and a Schedule is attached. The protection provided by this Policy is relevant only for the **period of the policy**.

**IMPORTANT:** This Policy provides cover on a claims made basis. A **claim** must be first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** to be covered. This Policy does not cover any actual or alleged **wrongful act** committed before the date specified as the Retroactive Date in the Schedule.

The paragraph and section headings in bold underlined upper case print are for information only and do not form part of the cover given by this insurance. The other terms in bold lower case print are defined terms and have a special meaning as set forth in the **DEFINITIONS** section.

### **INSURING CLAUSE**

In consideration of the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance **we** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Schedule or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any **wrongful act** committed by **you** or on **your behalf** in the course of **your** Business Activities as detailed in the Schedule.

### **COSTS**

We will also pay **costs and expenses** on **your** behalf.

### **LIMIT OF OUR LIABILITY**

**Our aggregate limit of liability** for all **claims** including **costs and expenses**, shall not exceed the amount shown in the Schedule.

### **YOUR EXCESS**

**We** shall only be liable for that part of each and every **claim** (which for the purpose of this clause shall be deemed to include all **costs and expenses** incurred), which exceeds the amount of the Excess stated in the Schedule.

If any expenditure is incurred by **us**, which by virtue of this clause is **your** responsibility then **you** shall reimburse such amount to **us** on **our** request.

## DEFINITIONS

- (1) **“Aggregate limit of liability”** means the maximum amount payable by **us** in respect of all **claims**.
- (2) **“Claim”** means a demand received by **you** for money or services, including the service of suit or institution of arbitration proceedings. **“Claim”** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).
- (3) **“Costs and expenses”** means
  - a) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**, and
  - b) **your** legal costs and expenses in the defence of any criminal claim made against **you**, provided that **we** maintain all rights of subrogation to recover such legal costs and expenses from any director, officer or **employee** if they are found guilty of such a criminal act.

Subject always to the **aggregate limit of liability** of this Policy, and subject to all **costs and expenses** being incurred with the Claims Managers’ written consent (such consent not to be unreasonably withheld).

- (4) **“Employee”** means any individual in the service of the company named as the Insured in the Schedule or any **subsidiary** who is compensated by salary, wages, fees or commissions and over whom **you** have the right to direct and control while performing services for **you**, but excluding any partner or director of the company named as the Insured in the Schedule or any **subsidiary**.
- (5) **“Intellectual property right”** means any intellectual property right including but not limited to trademarks, trade secrets, broadcasting rights, domain names, metatags and copyrights but does not include patents.

**“Intellectual property right”** does not mean any trade secret or confidential information that came into the possession of any person prior to the date he or she became an **employee**, director, or partner of the company named as the Insured in the Schedule or any **subsidiary**.

- (6) **“Period of the policy”** means the period between the Inception Date shown in the Schedule and the Expiry Date shown in the Schedule or until the Policy is cancelled in accordance with **CONDITION 9** of this Policy.
- (7) **“Subsidiary”** means any company which the company named as the Insured in the Schedule controls through:
  - a) holding 50% or more of the voting rights, or
  - b) having the right to appoint or remove 50% or more of its board of directors; or
  - c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.

(8) “**Third Party/ies**”, means any person or company who is not a director, partner or **employee** of the company named as the Insured in the Schedule or any **subsidiary**, at the time of their acts or omissions.

(9) “**We/our/us**” means the Underwriters named in the Schedule.

(10) “**Wrongful Act**” means any:

- a) negligent act, error or omission, negligent misstatement or negligent misrepresentation,
- b) unintentional breach of any implied statutory term concerning necessary quality, safety or fitness,
- c) unintentional breach of an implied contractual duty to use reasonable care and skill,
- d) unintentional breach of warranty of authority, breach of duty, breach of trust, breach of confidence, misuse of information or breach of privacy,
- e) unintentional breach of a written contract with a client to design, produce or supply software due to the software either not conforming in all material respects to the written specification forming part of the contract or failing to meet any implied statutory term concerning necessary quality, safety or fitness,
- f) unintentional infringement of any **intellectual property right**,
- g) libel, slander or defamation or passing off,
- h) dishonesty of **your employees** or self employed contractors.

(11) “**You/your**” means

- a) the company named as the Insured in the Schedule, or any **subsidiary**, and
- b) any past, present or future **employee**, director or partner of the company named as the Insured in the Schedule or any **subsidiary**.

### EXCLUSIONS

We will not make any payment on **your** behalf for any **claim** or incur any **costs and expenses**

- Other insurances**
- 1. arising directly or indirectly from bodily injury, sickness, disease or death sustained by any person arising out of and in the course of his/her employment by **you** under any contract of employment or apprenticeship, or for any breach of any obligation owed by **you** as an employer to any **employee**
  - 2. arising directly or indirectly from **your** ownership, possession or use of any land, building, aircraft, watercraft, vessel or mechanically propelled vehicle
  - 3. for or arising out of bodily injury, sickness, disease, or death sustained by any person or any loss, damage or destruction of property

4. for which **you** are entitled to indemnity under any other insurance except for
  - a) any additional sum which is payable over and above such other insurance, or
  - b) any contribution that **we** are obliged to make by law and that contribution shall be in proportion to the respective Limits of Liabilities of the Policies
5. arising out of or resulting from any employer-employee relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees

**Pollution, asbestos and toxic mold**

6. arising directly or indirectly or resulting from or in any way connected with (a) pollution or contamination of any kind, (b) the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust, or (c) the actual, potential, or alleged presence of mold, mildew or fungi of any kind whatsoever

**Nuclear**

7. for any liability directly or indirectly caused by or contributed to by or arising from
  - a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

**War and terrorism**

8. directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim**;
  - a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - b) any act of terrorism.

For the purpose of this **EXCLUSION** an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This **EXCLUSION** also excludes **claim**, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above

**Wilful or dishonest acts of**

9. arising out of any wilful, malicious, reckless or dishonest act or omission by any director or officer of the company named as the Insured in the Schedule or any **subsidiary**, unless such person had already ceased to be a director or

<b>directors</b>		officer of the company named as the Insured in the Schedule and all <b>subsidiaries</b> at the time of their first wilful, malicious, reckless or dishonest act or omission
<b>Circumstances known at inception</b>	10.	arising out of any circumstance(s) or occurrence(s) which could give rise to a <b>claim</b> under this Policy of which <b>you</b> are aware, or ought reasonably to be aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not
<b>Legal Action</b>	11.	where action for damages is brought in a court of law outside the territories specified in the Schedule, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of Reciprocal Agreement or otherwise
<b>Contractual liability</b>	12.	arising directly or indirectly from any liability that <b>you</b> assumed under any express warranty, agreement or guarantee unless such liability would have attached to <b>you</b> notwithstanding such express warranty, agreement or guarantee
<b>Limiting recovery rights</b>	13.	arising out of <b>your</b> failure to take reasonable steps to ensure that <b>our</b> rights of recovery against any <b>third party</b> are not unduly restricted or financially limited by a specific term in any contract or agreement
<b>Insolvency</b>	14.	arising out of or relating directly or indirectly from <b>your</b> insolvency or bankruptcy
<b>Patents</b>	15.	arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent
<b>Fines</b>	16.	for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages
<b>Cost guarantees</b>	17.	for or arising out of the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of <b>your</b> cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded
<b>Antitrust</b>	18.	for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising
<b>Trade Debt</b>	19.	arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by <b>you</b> , or any loss of <b>your</b> profit arising from the loss of any client, account or business
<b>Associated companies</b>	20.	<ul style="list-style-type: none"> <li>a) in respect of any <b>claim</b> made by any company firm or partnership in which the company named as the Insured in the Schedule has an executive or financial interest; or</li> <li>b) in respect of any <b>claim</b> made by any company firm partnership or individual which has an executive or financial interest in the company named as the Insured in the Schedule or any <b>subsidiary</b>, unless such <b>claim</b> emanates from an independent <b>third party</b>; or</li> <li>c) arising out of or resulting from any of <b>your</b> activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the</li> </ul>

company named as the Insured in the Schedule or any **subsidiary**; or  
 d) by or on behalf of the company named as the Insured in the Schedule or any **subsidiary**

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|-------------------------|---|
| <b>Future profits</b>   | 21. for future royalties or future profits, restitution, disgorgement of profits by <b>you</b> , or the costs of complying with the orders granting injunctive or equitable relief, or the return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided  |
| <b>EMF</b>              | 22. directly or indirectly arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property          |
| <b>ERISA</b>            | 23. arising out of or resulting from <b>your</b> acts related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act  |
| <b>RICO</b>             | 24. for or arising out of any actual or alleged violation of the Organised Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organisation Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law |
| <b>SEC</b>              | 25. for or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws  |
| <b>Retroactive Date</b> | 26. arising out of any actual or alleged <b>wrongful act</b> before the date specified as the Retroactive Date in the Schedule  |

**CONDITIONS**

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| <b>Fraudulent claims</b>  | 1. If <b>you</b> make any <b>claim</b> knowing that <b>claim</b> to be false or fraudulent in any way, <b>we</b> shall have no responsibility to pay that <b>claim</b> or any other <b>claims</b> under this insurance and the Policy will be treated as if it had not been effected.   |
| <b>What you must do in the event of a claim (or circumstance that</b> | 2. It is a Condition of this Policy that should <b>you</b> become aware of any <b>claim</b> or of any situation that could give rise to a <b>claim</b> against <b>you</b> or should an allegation, complaint or claim be made or intimated against <b>you</b> , the following obligations must be complied with by <b>you</b> before <b>we</b> will make any payment on <b>your</b> behalf or before <b>we</b> incur any <b>costs and expenses</b> .<br>a) <b>You</b> must not admit liability for or settle or make or promise any payment |

may lead to a claim).

in respect of any **claim** which may be covered under this Policy. Neither must **you** incur any **costs or expenses** in connection with such a **claim** without **our** written consent.

- b) The Claims Managers, as specified in the Schedule, must be notified as soon as is reasonably possible if during the **period of the policy**
- i) any allegation, complaint or **claim** is made or intimated against **you**, whether verbal or made in writing.
  - ii) **you** become aware of the intention of any person to make a complaint allegation or **claim** against **you**, whether verbal or in writing. Once notice has been made to **us**, **we** will regard any subsequent **claim** that may arise as notified under this Policy.
  - iii) **you** become aware of an action of **yours** that could give rise to an allegation, complaint or **claim** being made or intimated against **you**. Once notice has been made **we** will regard any subsequent claim that may arise as notified under this Policy.
  - iv) **you** discover reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a **claim** under this Policy or not and **we** shall not be liable under this Policy for any **claim** sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.

**We** have nominated the Claims Managers to accept notice on **our** behalf and they will decide what steps should be taken to protect **your** interests.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i), (ii), (iii) or (iv) above could lead to the size of **your claim** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any **claim** that is due to any unreasonable delay in **you** notifying the Claims Managers of any **claim** in accordance with this clause.

- a) **We** will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid, minimise, settle or defend any **claim**.

**You** must permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim** under this Policy where this action is deemed necessary, and **you** must comply with the advice given by such authorities.

**Agreement to pay claims**

3. **We** have the right and duty to take control of and conduct in **your** name the investigation settlement or defence of any **claim**. **We** shall also pay on **your** behalf **costs and expenses** incurred with **our** prior written consent (subject to the Limit of Liability shown in the Schedule) provided that **we** shall not

- a) pay for the **costs and expenses** of any part of a **claim** that is not covered

by this Policy.

- b) incur any **costs and expenses** in the defence of any **claim** unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.

**We** shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by **us** and the claimant. If **we** cannot settle by such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Schedule.

**Our** duty to defend **you** ends if **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept. **You** must then defend, investigate or settle the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability for any **claim** shall not be more than the amount that **we** could have settled the **claim** had **you** consented, plus any **costs and expenses** incurred prior to the date of such refusal.

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| <b>Our rights of recovery</b>                         | 4. | If any payment is made under this Policy in respect of a <b>claim</b> and there is available to <b>us</b> any of <b>your</b> rights of recovery against any other party then <b>we</b> maintain all such rights of recovery. <b>We</b> shall not exercise these rights against any past, present or future <b>employee</b> , director or partner of the company named as the Insured in the Schedule or any <b>subsidiary</b> , unless such payment is in respect of any wilful, malicious or dishonest acts or omissions.   |
| <b>Your duty to advise us of material changes</b>     | 5. | If <b>you</b> become aware that any of the answers that <b>you</b> have given <b>us</b> in the Application Form have materially changed then <b>you</b> must advise <b>us</b> as soon as is practicable. In this event, <b>we</b> reserve the right to amend the terms, conditions or premium of the Policy.   |
| <b>Your duty to comply with additional conditions</b> | 6. | If <b>we</b> attach any additional conditions to <b>your</b> Policy regarding any risk survey or risk management timetable or any other similar conditions then it is <b>your</b> responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.   |
| <b>Prior Subsidiaries</b>                             | 7. | Should an entity cease to be a <b>subsidiary</b> before or after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a <b>subsidiary</b> , until the termination of this Policy, but only in respect of any <b>claim</b> that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a <b>subsidiary</b> .  |
| <b>Mergers and acquisitions</b>                       | 8. | During the <b>period of the policy</b> , if the company named as the Insured in the Schedule or any <b>subsidiary</b> <ol style="list-style-type: none"> <li>a) purchases assets or acquires liabilities from another entity in an amount greater than ten percent (10%) of the assets of the company named as the Insured in the Schedule as listed in its most recent financial statement; or</li> <li>b) acquires another entity whose annual revenues are more than ten percent (10%) of the annual revenues of the company named as the Insured in the Schedule for their last completed financial year;</li> </ol> then <b>you</b> shall have no coverage under this Policy for any <b>claim</b> that arises out |

of any act, error or omission, whether committed either before or after such merger, purchase or acquisition

- a) at the premises of the acquired entity;
- b) by the acquired entity or any person employed by the acquired entity;
- c) involving or relating to the assets, liabilities, or **computer systems** of the acquired entity; or
- d) involving or relating to the purchased assets or liabilities,

unless the company named as the Insured in the Schedule gives **us** written notice prior to the purchase or acquisition, obtains **our** written consent to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Schedule consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Schedule has agreed to any additional premium and terms of coverage required by **us**.

**Cancellation 9.** This Policy may be cancelled

- a) if **you** give **us**, or **we** give **you**, 30 (thirty) days written notice, or
- b) should any amount in default not be paid within 14 (fourteen) days of the due date shown in the Debit Note that accompanies this Policy, **we** shall have the right to notify **you** in writing of cancellation of the Policy after 14 (fourteen) additional days should the amount in default not be paid by that date. Any cancellation so invoked by **us** shall cancel the Policy with effect from the Inception Date of the Policy ('ab initio').

If **you** give **us** notice of cancellation in accordance with a) above, thirty percent (30%) of the Premium shall be deemed earned upon inception of the policy, and the remaining earned premium shall be computed in accordance with the Lloyd's short rate table and procedure; provided that the Premium shall be deemed fully earned if any **claim** has been notified under this Policy.

If **we** give **you** notice of cancellation in accordance with a) above, the premium shall be computed at pro rata to the number of days that the Policy is in effect.

**Extended Reporting Period**

- 10.** In the event of cancellation or non-renewal of this Policy by **us**, an Extended Reporting Period of 30 days following such cancellation or non-renewal shall be automatically granted hereunder at no additional premium. Such Extended Reporting Period shall cover **claims** first made and reported to **us** during this 30 day Extended Reporting Period but only in respect of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by us in this 30 day Extended Reporting Period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

**Optional  
Extended  
Reporting  
Period**

11. In the event of cancellation or non-renewal of this Policy by **us** then **you** shall have the right, upon payment in full and not proportionally or otherwise in part, of 100% of the annual premium shown in the Schedule, to have issued an endorsement providing a 365 day Optional Extended Reporting Period from the cancellation or non-renewal date. Such Optional Extended Reporting Period shall cover **claims** first made and reported to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy. In order for **you** to invoke the Optional Extended Reporting Period option, the payment of the additional premium as stated in this paragraph for this Optional Extended Reporting Period must be paid to **us** within 15 days of the date of the non-renewal or cancellation.

At the commencement of this Optional Extended Reporting Period the entire premium shall be deemed earned and in the event that **you** terminate the Optional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid.

The right to the Extended Reporting Period or the Optional Extended Reporting Period shall not be available to **you** where:-

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or
- b) Cancellation or non-renewal by **us** is due to **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Excess as is required by this Policy in the payment of **claims**.

At the renewal of this Policy, **our** quotation of different premium, excess or limit of indemnity or changes in policy language shall not constitute non-renewal by **us** for the purposes of granting the Extended Reporting Period or the Optional Extended Reporting Period.

In no event shall the granting of the Extended Reporting Period or the Optional Extended Reporting Period increase **our** Limit of Liability, including **costs and expenses**, as shown in the Schedule.

**Choice of  
Law**

12. This Policy shall be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company named as the Insured in the Schedule and for this purpose, **we** and **you** agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company named as the Insured in the Schedule.