

## EXCESS LAYER LIABILITY INSURANCE CERTIFICATE

### The Contract of Insurance

This **Certificate** is a contract of insurance between **You** and **Us**. In return for the premium shown in the **Schedule** that **You** have paid or agreed to pay **We** agree to insure **You** in accordance with the terms and conditions contained in this **Certificate** and any **Endorsement**.

**You** should take the time to read all its terms, especially the conditions which **You** have to fulfil to ensure that **Your** insurance remains valid and what **You** have to do when making a Claim.

### Insurance Act

#### Duty of Fair Presentation

**You** are required to make a fair presentation of the risk to **Us**.

If **You** breach **Your** duty to provide a fair presentation and any such breach was deliberate or reckless, **We** may regard the **Certificate** as void and are not required to return any paid premium to **You**.

If the breach was not deliberate or reckless, **Our** remedy shall depend upon what **We** would have done if **You** had complied with the duty of fair presentation:

1. **We** may regard the **Certificate** as void if **We** would not have entered into the insurance on any terms in the absence of the breach. In this case, the **We** must return the premium paid.
2. If the **We** would have entered into the insurance but on different terms (other than terms relating to premium) the **Certificate** is to be treated as if those different terms applied from the outset, if **We** so require.
3. If **We** would have entered into the insurance but would have charged a higher premium **We** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims).

#### Sanctions

**MUM** is committed to complying with financial and trade sanctions legislation and export controls, anti-money laundering and anti-boycott laws applicable to our business (collectively, Sanctions).

**MUM** is unable to provide underwriting, claims handling, risk consulting or other services or provide any benefit to the extent that the provision of such services or benefit would violate applicable law or expose **MUM** or its affiliates to any sanction, prohibition or restriction under sanctions laws or regulations. In addition, we are generally restricted from providing broking, claims handling or other services that relate to Cuba and Iran - including because of significant difficulties in processing payments and other commercial and reputational considerations.

Any Insurance Intermediary or broker who undertakes any insurance intermediation activity in relation to this policy is required to comply similarly with laws applicable to us in respect of any services provided to **MUM** or on **MUM's** behalf.

To comply with Sanctions, **MUM** may be required to take actions such as freezing the funds of parties subject to Sanctions and making licence applications or notifications to relevant regulators. Other third parties **MUM** deals with, such as financial institutions, may also apply their own policies or restrictions to comply with Sanctions and **MUM** will not be liable for this or for similar steps taken by third parties.

### **Important**

In deciding to insure **You** and in setting the terms and premium, **We** have relied on the **Proposal**. **You** must ensure that all information provided in the **Proposal** is accurate and complete. **You** must disclose every material fact and circumstance **You** know or ought to know, and provide a fair presentation of the information required to enable **Us** to assess **Your** insurance risk, both at the commencement of the **Period of Insurance** and at any subsequent renewal of this **Certificate**.

It is important that **You**:

- check that the information **You** have given **Us** is accurate and complete;
- comply with **Your** duties as set out in this **Certificate** and any **Endorsement**.

If this **Certificate** does not meet **Your** requirements, or if **Your** requirements change, **You** should contact **Your** broker at **Your** earliest opportunity.

### **Renewal**

**MUM** will write to **Your Broker** at least 21 days before the **Period of Insurance** ends with renewal terms or with full details of the information that **MUM** will require in order to offer renewal terms. Please contact **Your Broker** if **You** do not want to renew this **Certificate**. Occasionally, **We** may not be able to offer to renew **Your Certificate**. If this happens, **We** will write to **Your Broker** at least 21 days before the expiry of **Your Certificate** to allow enough time for **You** to make alternative insurance arrangements.

### **Interpretation**

- words and expressions appearing in bold type shall bear the meanings given against the word or expression in the section of this **Certificate** headed "Definitions".
- headings are for ease of reference only and shall not be taken into account in construing this **Certificate**.
- references to masculine include the feminine and vice versa;
- the singular includes the plural and vice versa;
- reference to any legislation, statute or statutory provision shall include any amendment or replacement;
- references to any position, title or legislation shall include their equivalent in the relevant jurisdiction.

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## INSURING CLAUSE

### What is covered

In return for the premium shown in the **Schedule** that **You** have paid or agreed to pay **We** shall **Indemnify You** as follows for all sums which **You** become legally liable to pay as damages and claimant's costs fees and expenses in the event of:

- i) accidental **Bodily Injury** to any person
- ii) accidental loss of or damage to **Property**

occurring during the **Period of Insurance**.

### Limits of Indemnity

**Our** total liability to pay damages and claimants' costs fees and expenses shall not exceed the **Limits of Indemnity** shown in the **Schedule** and shall only be payable in excess of the **Underlying Limits** and after the **Primary and Underlying Excess Insurers** have paid or been held liable to pay the full amount of the **Underlying Limits**.

## EXCLUSIONS

### What is not Covered

These exclusions are applicable to the entire **Certificate** unless otherwise specified.

**We** will not **Indemnify You** against:

- 1 a) **Your** liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any asbestos containing materials  
b) **Your** obligation to defend any claim or suit alleging liability resulting from 1 a) above nor to any liabilities for any costs fees or expenses arising therefrom;
- 2 **Your** liability directly or indirectly caused by, happening through or following war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- 3 **Your** liability directly or indirectly caused by or contributed to by or arising from:
  - a) ionising radiation or contamination from 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 of an explosive nuclear assembly;
- 4 anything where or to the extent that to do so would expose **Us** or **MUM** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or any other economic or financial sanctions and embargos legislation applicable to **Us** or **MUM**.;
- 5 any judgment award payment or settlement made within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment award payment or settlement in whole or in part) nor in respect of legal costs fees and expenses pertaining thereto;
- 6 **Your** liability directly or indirectly caused by or arising out of **Terrorism** or any loss, damage, costs or expenses directly or indirectly caused by or arising out of any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**;
- 7 **Your** liability directly or indirectly caused by, contributed to by or arising out of any data protection legislation including but not limited to the Data Protection Act 2018 and the General Data Protection Regulation (EU 2016/679);
- 8 **Your** liability directly or indirectly caused by, contributed to by or arising out of **Wrongful Acts** committed or attempted by **Your** directors or officers;
- 9 **Your** legal liability directly or indirectly caused by, happening through or resulting from actual or suspected computer hacking and/or computer misuse and/or loss of data whether or not resulting in:

- i) actual or anticipated publication of data including but not limited to privileged information or sensitive personal data;
- ii) actual or suspected theft of data including but not limited to privileged information and sensitive personal data.

## **CLAIMS AND HOW TO MAKE A CLAIM**

It is a condition precedent to **Our** liability to **Indemnify You** or to make any payment under this **Certificate** that **You** will comply with "Claims and How to Make a Claim".

### **Notification**

**You** must give notice in writing to **MUM** as soon as reasonably practicable, but in any event within fourteen days, of any claim(s) made against **You** (or any specific accident, event, proceeding or circumstance that may give rise to a claim(s) being made against **You**) in respect of which the largest possible amount recoverable from **You** may exceed 50% of the total **Underlying Limits** on the assumption that **You** have no defence on any aspect of liability or quantum and excluding the possibility that **You** may have any right of recovery from any third party.

Notice shall include the reasons for the anticipation of a claim, with full particulars as to the circumstances, dates and persons involved. All documents related to the above requirements must be forwarded to **MUM** as soon as reasonably practicable, but no later than fourteen days after receipt. Thereafter, **You** shall supply at **Your** own expense such details and information as **We** may require. **You** shall exercise due diligence, carry out and permit to be taken any action which may be reasonably practicable to prevent, minimise or mitigate any or further loss, damage, injury, illness, accident or incurring liability.

New Claims, reportable accident notifications, or any notices of, or intention to, any adjudications should be made to [claims@manchesterunderwriting.com](mailto:claims@manchesterunderwriting.com) or Manchester Underwriting Management Limited, Link House, St Mary's Way, Chesham HP5 1HR (01494 770700).

## GENERAL CONDITIONS

- 1 This **Certificate** is subject to the same warranties conditions definitions terms and exclusions as the **Primary Policy** (except as regards the premium the obligation to investigate and defend the renewal agreement (if any) the amount and limits of indemnity and except as otherwise stated herein) which were applicable at the time the **Bodily Injury** and/or damage to **Property** occurs. This **Certificate** shall not automatically follow settlements in discharge of **Primary and Underlying Excess Insurers** liability under the **Underlying Policies**.
- 2 Liability to pay under this **Certificate** shall not attach unless and until the **Primary and Underlying Excess Insurers** shall have admitted liability for the **Underlying Limits** or unless and until **You** have by final judgment been held liable to pay an amount which exceeds such **Underlying Limits** and then only after **Primary and Underlying Excess Insurers** have paid or have been held liable to pay the full amount of the **Underlying Limits**.
- 3 It is a condition precedent to liability of this **Certificate** that the **Underlying Policies** are maintained in full force and effect during the currency of this **Certificate** except for any reduction of any aggregate limits contained therein solely by payment of claims thereunder.
- 4 In the event of reduction or exhaustion of any **Underlying Limits** for which an aggregate is stated in the **Underlying Policies** this **Certificate** subject to its terms conditions definitions and exceptions shall
  - a) in the event of reduction pay the excess of such reduced amounts
  - b) in the event of exhaustion apply in place of the **Underlying Policies** but not in respect of which any reduced inner aggregate underlying amount applies.
- 5 Where the premium is provisionally based on **Your** estimates **You** must keep accurate records and within ninety (90) days of the expiry of the **Period of Insurance** declare actual values as **We** require. The premium will then be adjusted and any difference paid or allowed to **You**, except that if the premium stated in the **Schedule** is expressed as "minimum and deposit" and the premium adjustment calculation results in an amount which is less than the "minimum and deposit" stated in the **Schedule**, a rebate of premium will not be paid to **You**. Failure to declare these particulars to **Us** will entitle **Us** to estimate those actual values if **We** so wish and to assess further premium payment due calculated on **Your** original estimated values.
- 6 In the event of any dispute between us as to the meaning, effect or validity of this **Certificate**, or the amount to be paid under this **Certificate** (liability being otherwise admitted by **Us**), then the dispute should be referred to an arbitrator to be appointed by **You** and **Us** in accordance with Insurance and Reinsurance Arbitration Society (ARIAS) (UK) Arbitration Rules (or any subsequently amending authority or rules). **You** may not take any legal action against **Us** over the dispute before the arbitrator has reached a decision.

All costs of the arbitration will be at the discretion of the arbitrator who will decide how much each of the parties in dispute must pay and to whom.

The seat of the arbitration will be in London, England and the arbitration tribunal will apply the proper law of this contract and of this arbitration condition as stated in General Condition 19.

However, **You** may not need to engage in arbitration if **You** meet the criteria for the Financial Ombudsman Service to deal with the dispute and **You** follow the complaints procedure, all of which is contained in "Complaints".

7 **You** must give notice to **Us** of any alteration or circumstance which materially affects the risks insured under this **Certificate** and until **We** are advised of that alteration or circumstance and have expressly agreed in writing to accept liability for that altered risk and **You** have paid or agreed to pay the additional premium (if any) **We** will not be liable in respect of any claim or claims due wholly or partially to that alteration or circumstance.

8 If any the insurers of any **Underlying Policy/ies** invoke their right or indicate an intention to invoke their right to pay their policy limit of indemnity and relinquish control of any claim then every claim notice letter writ or process or other documents served on **You** in connection with such event shall be notified or forwarded to **Us** immediately upon receipt. In all other circumstances copies of any claim notice letter writ or process or other documents should be provided to **Us** as soon as **You** become aware that the total amount being claimed against **You** exceeds 50% of the **Underlying Limits**.

9 **We** may at any time pay to **You** in connection with any claim or series of claims under this **Certificate** to which an **Indemnity** applies the **Limit of Liability** (after deduction of any sums already paid) or any lesser amount for which those claims can be settled and, upon payment being made, **We** will relinquish the conduct and control of and be under no further liability in connection with those claims except for the payment of defence costs incurred with **Our** consent before the date of payment (unless the limit of indemnity is stated to be inclusive of defence costs).

However, if **We** exercise the above option and the amount required to dispose of any claim or series of claims exceeds the limit of indemnity and the balance of the amount required to dispose of the claim is insured either in whole or in part with defence costs payable in addition to the limit of indemnity under this **Certificate** then **We** will also contribute **Our** proportion of subsequent defence costs incurred with **Our** consent. Our proportion will be calculated as the percentage of the relevant limit of indemnity under this **Certificate** to the total limit of indemnity provided by the insurances to which **You** are entitled to an **Indemnity**.

10 If **You** or anyone acting on **Your** behalf:

- a) make a fraudulent or exaggerated claim under this **Certificate**; or
- b) use fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim is itself genuine; or
- c) make a false statement in support of a claim whether or not the claim is itself genuine; or
- d) submit a claim under this **Certificate** for loss or damage which **You** or anyone acting on **Your** behalf or in connivance with **You** deliberately caused; or
- e) realise after submitting what **You** reasonably believed was a genuine claim under this **Certificate** and then fail to tell **Us** that **You** have not suffered any loss or damage; or



f) suppress information which **You** know would otherwise enable **Us** to refuse to pay a claim under this **Certificate**

**We** will be entitled to refuse to pay the whole of the claim and recover any sums that **We** have already paid in respect of the claim.

**We** may also notify **You** that **We** will be treating this **Certificate** as having terminated with effect from the date of any of the acts or omissions set out in clauses a) to f) of this condition.

If **We** terminate this **Certificate** under this condition **You** will have no cover under this **Certificate** from the date of termination and will not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an insured person and not on behalf of the Insured named in the **Schedule** this condition should be read as if it applies only to that insured person's claim and references to this **Certificate** should be read as if they were references to the cover effected for that person alone and not to the **Certificate** as a whole.

11 If **You** deliberately or recklessly breach **Your** duty to provide a fair presentation of risk **We** will be entitled to avoid this **Certificate**, refuse all claims and not return any of the premiums paid.

a) If the breach is neither deliberate nor reckless, **We** will avoid this **Certificate** and return the premiums only if **We** would not have entered into this contract had **We** known the true position. If **We** would have entered into this contract, but on different terms, those terms will be deemed to be incorporated in this **Certificate**. In addition, if **We** would have entered into this contract, whether the terms would have been the same or different, but would have charged a higher premium, **We** may reduce proportionately the amount to be paid on a claim.

b) The burden of proof for this condition will be on **Us**.

For the purpose of this condition, the acts, omissions or knowledge of one of the policyholders will not be imputed to any other policyholder.

**We** or **Your Broker** will write to **You** if **We**:

c) intend to treat this insurance as if it never existed; or

d) need to amend the terms of **Your** insurance.

12 MUM **Our** agent and not for **You**.

13 Any notice to be given under this **Certificate** must be sent by pre-paid first class post and shall be deemed to have been received:

12.1 by **You** if it is sent to **Your** last known address or to **Your Broker**; and

12.2 by **Us** if sent to **MUM**.

14 The due observance and fulfilment of the provisions of this **Certificate** insofar as they may relate to anything to be done or complied with by **You**, or are already described in the **Certificate** as conditions precedent, will be a condition of this **Certificate**.

In the event of a breach of any provision of the **Certificate**, and without prejudice to any of **Our** other rights, **We** may reject or reduce claims connected with the breach, providing **We** can demonstrate some prejudice, and continue the **Certificate** on such terms as it may determine and if any payment on account of any claim has already been made, **You** will repay forthwith all payments on account to **Us**.

- 15 If in respect of any claim under this **Certificate** there is or would but for the existence of this **Certificate** be any other insurance except the **Underlying Policy/ies** or any excess of loss policy specifically stated to be in excess of this **Certificate** applicable to such claim **We** shall not be liable under this **Certificate** except to the extent of any excess beyond the amount payable under such other insurance .

This condition will not apply if the other insurance is specifically written to be excess of this **Certificate**.

- 16 **You** agree to pay the premium in full to **Us** within 60 days of inception of the **Period of Insurance** and that if the premium has not been so paid **We** shall have the right to cancel this **Certificate** by giving **You** 14 days' notice in writing. If **We** exercise this right then the premium payable by **You** shall be due to **Us** pro-rata for the period during which **We** have been on risk during the **Period of Insurance** unless any notification has been made in accordance with "Claims and How to Make a Claim" section 1 prior to the expiry of the notice period in which case the full premium shall be due and payable.

**We** agree that if the premium due is paid in full to **Us** before the notice period expires, **Our** notice of cancellation shall be withdrawn automatically.

- 17 The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

- 18 **You** and **We** are the only parties to this contract and no other person or party has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any rights under this **Certificate**, but this does not affect the ability of any third party to enforce any other right or remedy they may have.

- 19 **We** may at any time during the **Period of Insurance** serve written notice on **You** at **Your** last known address cancelling the **Certificate** with effect from the thirtieth day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. **We** will return to **You** a part of the premium paid in excess of that proportionate to the pre-cancelled **Certificate**. If the premium at the commencement of the **Period of Insurance** has been calculated on any estimates provided by **You**, it will be adjusted in accordance with General Condition 5 before calculating the return of premium.

Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third day after being posted if sent by pre-paid letter post properly addressed.

If **You** pay **Your** premium by direct debit and there is any default in payment, **We** will contact **You** to request payment by a given date. If payment is still not received by this date, **We** may then cancel this insurance. No refund or credit of premium will be due when cancellation takes place in these circumstances.

- 20 This **Certificate** is governed by English law unless, at the commencement of the **Period of Insurance**, **You** are either a resident of or a business with its registered office or principal place of business situated in Scotland, Northern Ireland, the Channel Islands or the Isle of Man, in which case the laws of that country, crown protectorate or dependency will apply.
- 21 The language of **Your Certificate** and any communication throughout the duration of the **Period of Insurance** will be English.
- 22 The insolvency bankruptcy receivership or any refusal or inability to pay by **You** and/or any insurer shall not operate to
- a) reduce or exhaust the **Underlying Limits**
  - b) increase the **Our** liability under this **Certificate**.
- 23 Where these Conditions require notice to be given to **Us** that notice shall be given in writing to **MUM**.

## DEFINITIONS

In this **Certificate** where the following words appear in bold type they shall have these meanings:

|   |   |
|---|---|
| <b>Bodily Injury</b>                          | Death, injury, illness, disease or nervous shock  |
| <b>Certificate</b>                            | This document and any accompanying <b>Schedule</b> and <b>Endorsements</b> to it  |
| <b>Deductible</b>                             | The amount payable by <b>You</b> and not indemnifiable by the <b>Primary and Underlying Excess Insurers</b> under the <b>Underlying Policy/ies</b>  |
| <b>Endorsement</b>                            | A document detailing a change in the terms and conditions of this insurance   |
| <b>Excess</b>                                 | The amount payable by <b>You</b> before the <b>Primary and Underlying Excess Insurers</b> are obliged to make any payment under the <b>Underlying Policy/ies</b>  |
| <b>Indemnity / Indemnify / Indemnified</b>    | The principle according to which a person who has suffered a loss is restored (so far as possible) to the same financial position that they were in immediately before the loss, subject to the limits of indemnity as specified in the <b>Schedule</b> . |
| <b>Limit of Liability</b>                     | The amount stated in the <b>Schedule</b>  |
| <b>MUM</b>                                    | Pen Underwriting Limited trading as Manchester Underwriting Management whose address is Link House, St. Mary's Way, Chesham, Buckinghamshire HP5 1HR, who act as <b>Our</b> agent   |
| <b>North America</b>                          | The United States of America or Canada or any countries, territories, possessions, dependencies or protectorates which operate under the laws of the United States of America or Canada.  |
| <b>Primary Policy</b>                         | The Primary Policy specified in the <b>Schedule</b> that is not an excess layer policy  |
| <b>Proposal</b>                               | All information supplied by <b>You</b> to <b>Us</b> by written, electronic or any other means   |
| <b>Period of Insurance</b>                    | The period stated in the <b>Schedule</b>  |
| <b>Property</b>                               | Property which is both material and tangible  |
| <b>Primary and Underlying Excess Insurers</b> | The insurer or insurers subscribing to the <b>Underlying Policy/ies</b>   |
| <b>Schedule</b>                               | The schedule attached to this <b>Certificate</b>  |

|                              |   |
|------------------------------|---|
| <b>Terrorism</b>             | Act of terrorism means an act, including but not limited to the use of force or violence and/or the threat of an act of terrorism, 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   |
| <b>Underlying Limits</b>     | The amount stated in the <b>Schedule</b> as the “Total Primary and Underlying Excess Limits” and which is the cumulative maximum amount of the liability to <b>Indemnify You</b> by the <b>Primary and Underlying Excess Insurers</b> under the <b>Underlying Policy/ies</b> after payment by <b>You</b> of any applicable <b>Excess</b> and/or deduction of the <b>Deductible</b>  |
| <b>Underlying Policy/ies</b> | The <b>Primary Policy</b> and Underlying Excess Policy/ies specified in the <b>Schedule</b>   |
| <b>Us/Our/We</b>             | The Insurer or Insurers stated in the Schedule of Insurers  |
| <b>Wrongful Act</b>          | Any actual or alleged error or mis-statement or misleading statement or omission or neglect or breach of duty by <b>Your</b> directors or officers in the discharge of their duties individually or collectively claimed against them solely by reason of their being <b>Your</b> directors or officers   |
| <b>You/Your</b>              | <ul style="list-style-type: none"> <li>a) The policyholder named in the <b>Schedule</b>;</li> <li>b) Any associated or subsidiary company of the policyholder provided it has been notified to and accepted by <b>Us</b>;</li> <li>c) At <b>Your</b> request: <ul style="list-style-type: none"> <li>i) any director or <b>Employee</b> while acting on behalf of or in course of their employment or engagement with <b>You</b> in respect of liability for which <b>You</b> would have been entitled to <b>Indemnity</b> under this <b>Certificate</b> if the claim had been made against <b>You</b>;</li> <li>ii) any officer, member or <b>Employee</b> of <b>Your</b> social, sports or welfare organisation or fire, first aid or ambulance service in their respective capacity;</li> <li>iii) any of <b>Your</b> directors, partners or senior officials in respect of private work carried out by any <b>Employee</b> for them with <b>Your</b> consent;</li> <li>iv) any <b>Principal</b> for legal liability in respect of which <b>You</b> would have been entitled to <b>Indemnity</b> under this <b>Certificate</b> if the claim had been made against <b>You</b> arising out of work carried out by <b>You</b> under a contract or agreement;</li> <li>v) <b>Your</b> personal representatives (in the event of <b>Your</b> death) in respect of liability incurred by <b>You</b> provided that if <b>Indemnity</b> is extended to any party described in paragraphs c)i) to c)iv) above that party complies with the terms of this <b>Certificate</b> so far as they can apply and in any event <b>Our</b> liability will not exceed the limit of indemnity.</li> </ul> </li> </ul> |

