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INTELLECTUAL PROPERTY INSURANCE

Policy Document

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CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom
T: +44 (0) 207 220 8500
F: +44 (0) 207 220 8501
E: enquiries@cfcunderwriting.com
W: www.cfcunderwriting.com

PREAMBLE

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all of the details of the cover that **we** provide. 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 Sections of this Policy are identified by the **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in **BLUE UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa.

IMPORTANT: INSURING CLAUSE I (SECTIONS A and B only) provides cover on a claims made and reported basis. Under this **INSURING CLAUSE** a **claim** must be first made against **you** and notified to **us** during the **period of the policy** or the Extended Reporting Period to be covered.

In consideration of the Premium and in reliance upon 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 provide the cover as set out below:

INSURING CLAUSES

INSURING CLAUSE 1: INTELLECTUAL PROPERTY RIGHTS DEFENCE

SECTION A: PATENT INFRINGEMENT AND CONTRACTUAL OBLIGATIONS DEFENCE

In respect of patents, **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 **you** and notified to **us** during the **period of the policy** arising out of any actual or alleged:

- a) infringement by **you**;
- b) infringement by a **third party** as a result of **products** supplied by **you** to that **third party** where **you** are contractually obliged to indemnify them as a direct result of their infringement;
- c) infringement as a result of a breach by **you** of the rights granted under a licence where **you** acted in good faith and did not knowingly intend to breach those rights;
- d) infringement as a result of **your** non payment of fees or royalties under a licence agreement where **you** dispute the ownership, validity or infringement of that patent licensed to **you** or whether that licence agreement applies; or
- e) dispute by an employee in respect of entitlement to compensation or to a right, title or interest in a patent.

We will also pay **costs and expenses** on **your** behalf in respect of a **claim** made under this **SECTION**, including:

- i) costs incurred in making a counterclaim that is directly linked to the **claim**; and
- ii) costs incurred in effecting a **product recall** where **you** are legally obliged to make the **product recall**.

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND CONTRACTUAL OBLIGATIONS DEFENCE

In respect of all **intellectual property rights**, other than patents, **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 **you** and notified to **us** during the **period of the policy** arising out of any actual or alleged:

- a) infringement by **you**;
- b) infringement by a **third party** as a result of **products** supplied by **you** to that **third party** where **you** are contractually obliged to indemnify them as a direct result of their infringement;
- c) infringement as a result of a breach by **you** of the rights granted under a licence where **you** acted in good faith and did not knowingly intend to breach those rights;
- d) infringement as a result of **your** non payment of fees or royalties under a licence agreement where **you** dispute the ownership, validity or infringement of that **intellectual property right**, other than a patent, licensed to **you** or whether that licence agreement applies; or
- e) dispute by an employee in respect of entitlement to compensation

or to a right, title or interest in an **intellectual property right** other than a patent.

We will also pay **costs and expenses** on **your** behalf in respect of a **claim** made under this **SECTION**, including:

- i) costs incurred in making a counterclaim that is directly linked to the **claim**; and
- ii) costs incurred in effecting a **product recall** where **you** are legally obliged to make the **product recall**.

SECTION C: REPUTATION AND BRAND PROTECTION

We agree to pay costs reasonably incurred, subject to **our** prior written agreement, for the services of a public relations consultancy for the purpose of averting or mitigating damage to **your** reputation or brand caused by a **claim** covered under any **SECTION** of this **INSURING CLAUSE** for which **you** have purchased cover where an event has been publicised through the media, including but not limited to television, print, radio or the internet, which might reasonably be considered to create a material threat to **your** reputation.

The public relations consultancy shall be chosen by the Claims Managers who shall take into account the nature of the **claim** and the cost and quality of the services that they can deliver, unless **you** have reasonable cause to request a different public relations consultancy and the Claims Managers and **you** mutually agree upon this company.

INSURING CLAUSE 2: INTELLECTUAL PROPERTY RIGHTS PURSUIT

SECTION A: PATENT INFRINGEMENT PURSUIT

We agree to pay the **costs and expenses** incurred, subject to **our** prior written agreement, as a result of any **claim** first made by **you** during the **period of the policy** in the pursuit of a **third party** arising out of the actual, alleged or threatened infringement of a patent owned by **you**, or a patent for which **you** have an exclusive licence.

We will also pay **costs and expenses** on **your** behalf in the event that the **third party** makes a counterclaim against **you** that is directly linked to the **claim**.

SECTION B: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT PURSUIT

We agree to pay the **costs and expenses** incurred, subject to **our** prior written agreement, as a result of any **claim** first made by **you** during the **period of the policy** in the pursuit of a **third party** arising out of the actual, alleged or threatened infringement of any **intellectual property right**, other than a patent.

We will also pay **costs and expenses** on **your** behalf in the event that the **third party** makes a counterclaim against **you** that is directly linked to the **claim**.

INSURING CLAUSE 3: LOSS OF INTELLECTUAL PROPERTY RIGHTS AND FUTURE PROFIT

SECTION A: LOSS OF AN INTELLECTUAL PROPERTY RIGHT

We agree to reimburse the fees that **you** have paid to successfully register and maintain an **intellectual property right** where the rights that were assigned to **you** under that registration have been revoked or invalidated as a direct result of a **claim** covered under **INSURING CLAUSE 1** or **INSURING CLAUSE 2**.

However, we will only reimburse the fees that **you** have paid:

- to an intellectual property office or other public agency and to **your** advisors exclusively in respect of their work undertaken for the successful registration and maintenance of the **intellectual property right** including drafting and submitting the original registration application on **your** behalf; and
- in the jurisdictions where the **claim** for invalidity or revocation was upheld; and
- for the part of the **intellectual property right** that is no longer assigned to **you** under registration as a direct result of the **claim**.

SECTION B: LOSS OF FUTURE PROFIT

We agree to reimburse **your direct loss of profit** incurred during the **indemnity period** as a direct result of:

- a court or arbitral tribunal upholding a **claim**; or
- our** agreement to the out of court settlement of a **claim**;

which is covered under **INSURING CLAUSE 1** or **INSURING CLAUSE 2** and resulting in **you** being legally obliged to refrain from using an **intellectual property right**.

INSURING CLAUSE 4: LOSS MITIGATION

We agree to pay any reasonable costs, including the costs of effecting a **product recall**, necessarily incurred by **you** in respect of any measures taken by **you** for the sole purpose of mitigating a **claim** or a potential **claim** for which **you** would be entitled to indemnity under this Policy had these measures not been taken, provided that:

- you** have previously notified **us** of the **claim** or potential **claim**; and
- the costs in respect of the measures taken by **you** to mitigate the **claim** or potential **claim** are less than the expected value of the **claim** or potential **claim**, including the **costs and expenses** which would otherwise have been incurred in respect of that **claim**; and
- the costs do not include any provision for salaries or other remuneration of **your** employed staff, any provision for **your** loss of income or any provision for **your** normal operating expenses; and
- the costs are incurred with **our** prior written agreement.

HOW MUCH WE WILL PAY

The maximum amount payable by **us** for all **claims** and **costs and expenses** shall not exceed the amounts stated in the Schedule in respect of each **INSURING CLAUSE** unless limited below.

Where more than one **claim** is made by the same company and arises out of identical, or substantially similar, intellectual property, or a **claim** arises in more than one jurisdiction from identical, or substantially similar, intellectual property then regardless of the legal definition of that intellectual property in the jurisdictions where the **claim** arises, all of those **claims** shall be deemed to be one **claim**.

Where cover is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** only one **limit of liability** shall be payable in respect of that **claim** and this shall be the highest **limit of liability** of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

In respect of **INSURING CLAUSE 1**, we may at any time pay to **you** in connection with any **claim** the amount of the **limit of liability** (after deduction of any amounts already paid by **us** and any coinsurance that is **your** responsibility to pay). Upon the payment being made we shall relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim** except for the payment of **costs and expenses** incurred prior to the date of the payment (unless the **limit of liability** is stated to be inclusive of **costs and expenses**).

If **costs and expenses** are stated in the Schedule to be in addition to the **limit of liability**, or if the operation of local laws require **costs and expenses** to be in addition to the **limit of liability**, and if a damages payment in excess of the **limit of liability** has to be made to dispose of any **claim**, **our** liability for **costs and expenses** shall be in the same proportion as the **limit of liability** bears to the amount of the damages payment.

YOUR DEDUCTIBLE

We shall only be liable for that part of each and every **claim** or **costs and expenses** which exceeds the amount of the Deductible stated in the Schedule, less the percentage of coinsurance stated in the Schedule. If any of this expenditure is incurred by **us** which falls within the amount of the Deductible stated in the Schedule, then **you** shall reimburse that amount to **us** on **our** request.

Where more than one **claim** is made by the same company and arises out of identical, or substantially similar, intellectual property, or a **claim**

arises in more than one jurisdiction from identical, or substantially similar, intellectual property then regardless of the legal definition of that intellectual property in the jurisdictions where the **claim** arises, all of those **claims** shall be deemed to be one **claim**.

Where cover is provided under multiple **SECTIONS** or multiple **INSURING CLAUSES** only one Deductible will apply to that **claim** and this shall be the highest Deductible of the **SECTIONS** or **INSURING CLAUSES** under which cover is provided.

COINSURANCE

You shall be liable for the coinsurance percentage stated in the Schedule of each and every **claim** or **costs and expenses** which exceeds the amount of the Deductible. If any expenditure is incurred by **us** which falls within this coinsurance percentage, then **you** shall reimburse that amount to **us** on **our** request.

The **policy aggregate limit of liability** shall be eroded by the amount of the coinsurance.

DEFINITIONS

1. **“Business activities”**
means the Business Activities as stated in the Schedule.
2. **“Claim”**
means:
 - a) a demand for money, including the threat of or the actual service of a suit or initiation of arbitration or mediation proceedings;
 - b) a cease and desist notice or the initiation of a suit seeking injunctive relief (meaning a preliminary or permanent injunction) or declaratory relief as a consequence of an alleged infringement of intellectual property;
 - c) an invalidation, annulment or revocation action or an inter-partes re-examination in respect of an **intellectual property right**; or
 - d) a request for a declaration of non infringement directly related to **your products**.
3. **“Costs and expenses”**
means:
 - a) **your third party** legal costs and expenses in the pursuit, defence, appeal or settlement of any **claim**, including any counterclaim;
 - b) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**;
 - c) the amount of any judgment awarded against **you** where **you** are ordered to reimburse a **third party’s** losses incurred as a direct result of an interim injunction requested by **you** which is subsequently overturned;
 - d) the costs of effecting a **product recall** as a direct result of a **claim**; or
 - e) the premium for an appeal bond, attachment bond or other similar bond as security for an injunction, but without any obligation to furnish these bonds.
4. **“Direct loss of profit”**
means the reasonably forecasted income generated directly from **your business activities** (before sales tax) for the **indemnity period**; less:
 - a) actual income (before sales tax) generated from **your business activities** for the **indemnity period**; and
 - b) any cost savings achieved as a direct result of the reduction in income.
5. **“Indemnity period”**
means the period beginning at the date of the final disposition or settlement of a **claim** and lasting for the number of months stated in the Schedule.
6. **“Intellectual property right”**
means any intellectual property right, including, but not limited to, a patent, copyright, trade mark or service mark, design right, domain name or trade secret.
7. **“Limit of liability”**
means the maximum amount payable by **us** as stated in the Schedule in respect of each **claim**.
8. **“Period of the policy”**
means:
 - a) the period between the Inception Date stated in the Schedule and the Expiry Date stated in the Schedule; or
 - b) the period between the Inception Date stated in the Schedule and the date on which the Policy is cancelled in accordance with the “Cancellation” **CONDITION**.
9. **“Policy aggregate limit of liability”**
means the maximum amount payable by **us** as stated in the Schedule.
10. **“Products”**
means any product or service including packaging, labelling and manuals which is, or is intended to be, manufactured, used, imported, licensed, sold or offered for sale by **you** or on **your** behalf.
11. **“Product recall”**
means:

an action to retrieve **your products** from a **third party** or withdraw **your products** from sale or prevent the distribution of **your products** or destroy **your products**, including but not limited to:

 - a) the cost of newspaper, magazine, radio and television and other public announcements as well as the cost of correspondence for the purpose of the announcement and implementation to recall **your products**; and
 - b) the cost of shipping **your products** from the purchaser, distributor or user to the place or places designated by **you**; and
 - c) the cost of hiring temporary staff for the analysis, research, consulting, inspection, collection, withdrawal or return of **your products** including any reasonable accommodation costs; and
 - d) the rental costs for additional premises; and
 - e) the reimbursement of any cancellation fees due to the **third party**, provided there is a contractual agreement requiring you to pay these cancellation fees.
12. **“Reasonable prospects of success”**
means on the basis of all relevant information reasonably available to **you**, it is commercially proportionate and necessary to make a **claim** against a **third party** to mitigate or prevent a materially adverse effect to **your business activities** and, in respect of that **claim**, it being more likely than not that **you** will win on all principal points against the **third party**.
13. **“Senior executive officer”**
means board members, executive officers, in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information officers and chief privacy officers of the company named as the Insured in the Schedule or any **subsidiary**.
14. **“Subsidiary”**
means any company which the company named as the Insured in the Schedule controls through:
 - a) holding or controlling 50% or more of the voting rights; or
 - b) having the right to appoint or remove 50% or more of its board of directors.
15. **“Third party”**
means:
 - a) any person who is not a **senior executive officer** or employee of the company named as the Insured in the Schedule or any **subsidiary**; or
 - b) a company other than the company named as the Insured in the Schedule or any **subsidiary**.
16. **“We/our/us”**
means the Underwriters named in the Schedule.
17. **“You/your”**
means:
 - a) the company named as the Insured in the Schedule or any **subsidiary**, and
 - b) any past, present or future **senior executive officer** of the company named as the Insured in the Schedule or any **subsidiary**.

EXCLUSIONS

We will not:

- a) make any payment on **your** behalf for any **claim**; or
- b) incur any **costs and expenses**; or
- c) make any payment for any other costs incurred by **you**:

1. **Antitrust**

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.

2. **Associated companies**

- a) in respect of any **claim** made by any company firm or partnership in which the company named as the Insured in the Schedule or any **subsidiary** has greater than a 10% executive or financial interest, unless the **claim** emanates from an independent **third party**; or
- b) in respect of any **claim** made by any company firm partnership or individual which has greater than a 10% executive or financial interest in the company named as the Insured in the Schedule or any **subsidiary**, unless the **claim** emanates from an independent **third party**; or
- c) arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organisation, corporation, company or business other than that of the company named as the Insured in the Schedule or any **subsidiary**; or
- d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Schedule or any **subsidiary**; or
- e) in respect of any **claim** made by or on behalf of any **senior executive officer**.

3. **Circumstances known at inception**

arising out of any circumstances or occurrences which may give rise to a **claim** under this Policy of which a **senior executive officer** was aware, or ought reasonably to have been aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.

4. **Contempt of court**

arising directly or indirectly out of **your** wilful non-compliance with a court order.

5. **Expiry or termination**

arising directly or indirectly out of the expiry or termination of a contractual right, licence or permission to use an **intellectual property right**.

However, this **EXCLUSION** shall not apply to parts c) or d) of **SECTION A** of **INSURING CLAUSE 1** or parts c) or d) of **SECTION B** of **INSURING CLAUSE 1**.

6. **Fines**

for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages or interest.

7. **Insolvency**

arising out of or relating directly or indirectly to **your** insolvency or bankruptcy.

However, **your** insolvency shall not relieve **us** of any of **our** obligations under this Policy where this insolvency does not give rise to a **claim**.

8. **Legal action**

where an action for damages is brought in a court of law outside the territories specified in the Schedule, or where an action is brought in a court of law within those territories to enforce a judgment outside of those territories whether by way of reciprocal agreement or otherwise.

9. **Official investigations**

arising directly or indirectly out of any formal hearing, official investigation, examination, inquiry or any other similar proceeding initiated against **you** by a governmental, regulatory, law enforcement, professional or statutory body.

However, this **EXCLUSION** shall not apply to any **claim** for any actual or alleged infringement of an **intellectual property right** granted under a licence to that governmental, regulatory, law enforcement, professional or statutory body.

10. **Patents**

arising directly or indirectly out of a patent.

However, this **EXCLUSION** shall not apply to **SECTION A** of **INSURING CLAUSE 1**, **SECTION A** of **INSURING CLAUSE 2** or **INSURING CLAUSE 3**.

11. **Uninsured activities**

arising out of **your** activities other than the **business activities** stated in the Schedule.

12. **Wilful, deliberate or dishonest acts**

arising out of any wilful, deliberate, malicious, reckless or dishonest act, omission or infringement.

CONDITIONS

1. **What you must do in the event of a claim**

Should a **senior executive officer** become aware of any **claim** or a circumstance which may give rise to a **claim**, the following obligations must be complied with by **you**:

- a) **You** must not:
 - i) admit liability, settle, make or promise any payment; or
 - ii) incur any **costs and expenses**; or
 in respect of any **claim** which may be covered under this Policy without **our** prior written agreement.
- b) The Claims Managers, as specified in the Schedule, must be notified as soon as is reasonably practicable.

We have nominated the Claims Managers to accept notice on **our** behalf. Due to the nature of the coverage offered by this Policy, any unreasonable delay by **you** in notifying the Claims Managers of (i), or (ii) above could lead to the size of the **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 **CONDITION**.

Once notice has been made **you** must give the Claims Managers all the assistance and information that they reasonably require.

You must do anything that they reasonably require **you** to do to avoid, minimise, settle, defend or pursue a **claim**.

2. **Fraudulent claims**

If **you** notify **us** of any **claim** knowing that claim to be false or fraudulent in any way, **we** shall have no responsibility to pay that claim to the extent that it was fraudulent.

3. **Agreement to pay defence claims**

It is **your** right and duty to control and conduct in **your** name the investigation, settlement or defence of any **claim** under **INSURING CLAUSE 1** of this Policy.

We shall pay on **your** behalf **costs and expenses** incurred with **our** prior written agreement.

Where it is appropriate **you** shall settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution. **We** shall pay on **your** behalf the amount agreed between

you and the claimant, subject always to **our** written agreement of that amount. If settlement cannot be agreed by these means, **we** shall pay the amount which **you** are found liable to pay either through court or arbitration proceedings.

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** for had **you** consented, plus any **costs and expenses** incurred prior to the date of such refusal.

4. Agreement to bring pursuit claims

To make a claim under **INSURING CLAUSE 2** of this Policy you are required to demonstrate **reasonable prospects of success** based upon independent legal advice.

To consider **your reasonable prospects of success**, **you** must provide the Claims Managers with full and accurate information about the matter notified, including but not limited to:

- a) a copy of the independent legal advice; and
- b) the **intellectual property right** which is the subject matter of the **claim**; and
- c) the full details of the alleged infringement of the **intellectual property right** which is the subject matter of the **claim** including the date **you** first became aware of the alleged infringement, the **third parties** involved in the alleged infringement and the jurisdiction governing the alleged infringement; and
- d) evidence of ownership of the **intellectual property right** which is the subject matter of the **claim**; and
- e) the likely **costs and expenses** to be incurred to pursue a **claim** against a **third party**; and
- f) any documentary evidence obtained from an independent or in-house expert; and
- g) any preliminary assessment of the alleged infringer, including their financial position, geographic location and any evidence of prior litigation; and
- h) preliminary consideration whether the pursuit of the **claim** may be regarded as a groundless threat; and
- i) preliminary assessment of whether the alleged infringer may bring an infringement **claim** against **you** and what impact this may have on **your reasonable prospect of success**; and
- j) all relevant advice received from **your** legal or other advisors.

If the Claims Managers consider there are **reasonable prospects of success** they will provide **you** with their written agreement to pursue the **claim** as soon as is practicable. However, if the Claims Managers do not consider there are **reasonable prospects of success** but **you** disagree with their decision, **you** have the option to resolve the disagreement through binding arbitration in accordance with the commercial arbitration rules of the Australian Centre for International Commercial Arbitration (the "ACICA") in effect at the time of the dispute.

If the ACICA agrees with **you** that there are **reasonable prospects of success** **we** will pay the fees and expenses of the independent expert. However, if the ACICA agrees with **us** that there are no **reasonable prospects of success** the fees and expenses of the ACICA shall be shared equally between **you** and **us**.

We agree with **you** that if the Claims Managers provide their written agreement to pursue the **claim** it is **your** right and duty to pursue the **claim** in **your** name.

The Claims Managers will monitor the progress of the **claim**. **You** must notify the Claims Managers if **your** opinion on the **reasonable prospect of success** changes during the course of the **claim**. If at any time during the progress of the **claim** it becomes apparent that any of the information provided by **you** to enable us to consider **your reasonable prospects of success** is materially incorrect, the Claims Managers reserve the right to withdraw their agreement to incur further **costs and expenses** in the pursuit of the **claim**. The Claims Managers will notify **you** if they intend to do this; however, if **you** disagree with their decision, **you** have the option to obtain the opinion of an independent expert to resolve the disagreement as

described above.

If the Claims Managers provide their written agreement but subsequently withdraw it then **you** may continue to pursue the **claim** at **your** own expense. However, if **you** elect to continue the pursuit of the **claim** and the court or arbitral tribunal upholds all of the principal points of the **claim** **we** will reimburse those additional **costs and expenses** incurred by **you** from the date that the agreement was withdrawn up until the final disposition of the **claim**.

5. Payment of loss of profit claims

We shall pay **your direct loss of profit** which will be determined, where it is deemed appropriate, by a suitably qualified professional appointed by the Claims Managers.

6. Non-payment of costs and expenses

We shall not pay **costs and expenses** for any part of a **claim** that is not covered by this Policy.

7. Your duty to advise us of changes

If **you** become aware that any of the information that **you** have given **us** in the Application Form or elsewhere in connection with **your** application for this insurance has materially changed, including any material reduction to your risk management procedures, then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms, conditions or premium of the Policy.

8. Our rights of recovery

If any payment is made under this Policy in respect of a **claim** and there is available to **us** any of **your** rights of recovery against any **third party** then **we** maintain all these rights of recovery.

We shall not exercise these rights against any past, present or future **senior executive officer**, unless the payment is in respect of any wilful, malicious or dishonest acts or omissions.

You must do nothing to impair any rights of recovery. At **our** request **you** will bring proceedings or transfer those rights to **us** and help **us** to enforce them. Any recoveries shall be applied as follows:

- a) first, to **us** up to the amount of **our** payment on **your** behalf including **costs and expenses**;
- b) then to **you** as recovery of **your** Deductible or other amounts paid as damages or **costs and expenses**.

9. Cancellation

This Policy may be cancelled:

- a) by **you** at any time on request; or
- b) by **us**, in accordance with the relevant provisions of the Insurance Contracts Act 1984.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be pro rata to the number of days that the Policy is in effect, 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 b) above, the Premium shall be pro rata to the number of days that the Policy is in effect.

The Policy Administration Fee shall be deemed fully earned at the Inception Date of this Policy.

10. Prior Subsidiaries

In respect of **INSURING CLAUSES 1** and **2** only, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of this entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of a **claim** which arises out of an infringement occurring prior to the date that it ceased to be a **subsidiary**.

11. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Schedule or any **subsidiary**:

- a) purchases assets or acquires liabilities from another entity; or
- b) acquires another entity;

then **you** shall have no coverage under this Policy for any **claim** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Schedule gives **us**

written notice prior to the purchase or acquisition, obtains **our** written agreement 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 or any **subsidiary** 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 or any **subsidiary** has agreed to any additional premium and terms of coverage required by **us**.

12. Automatic extended reporting period

In respect of **INSURING CLAUSE I** only, an Automatic Extended Reporting Period of 60 days following the Expiry Date as stated in the Schedule shall be automatically granted at no additional premium. This Automatic Extended Reporting Period shall cover **claims** first made against **you** during the **period of the policy** and reported to **us** during this 60 day Automatic Extended Reporting Period but only in respect of any infringement occurring prior to the Expiry Date stated in the Schedule, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by **us** in this 60 day Automatic 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.

13. Optional extended reporting period

In respect of **INSURING CLAUSE I** only, if **we** decline to renew or cancel this Policy then **you** shall have the right, upon payment of the Optional Extended Reporting Period Premium stated in the Schedule in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period which shall be effective from the cancellation or non-renewal date. This Optional Extended Reporting Period shall cover **claims** first made against **you** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of an infringement occurring 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 Optional Extended Reporting Period Premium stated in the Schedule for this Optional Extended Reporting Period must be paid to **us** within 45 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 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 any amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible as is required by this Policy in the payment of **claims**.

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

In no event shall the Automatic Extended Reporting Period or the granting of the Optional Extended Reporting Period increase the **limit of liability** or **policy aggregate limit of liability**.

15. Dispute resolution

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to:

The Managing Director
CFC Underwriting Ltd
85 Gracechurch Street
London EC3V 0AA
United Kingdom

Telephone Number: +44 207 220 8500
Email: enquiries@cfcunderwriting.com

in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should contact:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

If **your** dispute remains unresolved **you** may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes **you** will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

Notwithstanding the above, at **your** request **we** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia and the dispute shall be determined in accordance with the law and practice applicable in such Court. Any summons, notice or process to be served upon **us** may be served upon Lloyd's General Representative in Australia, at the address above, who has authority to accept service and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.

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INTELLECTUAL PROPERTY INSURANCE



CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom
T: +44 (0) 207 220 8500
F: +44 (0) 207 220 8501
E: enquiries@cfcunderwriting.com
W: www.cfcunderwriting.com