

# P E S ❖ L T P S

PROPERTY EXPENSES SCHEME ❖ LIABILITIES TO THIRD PARTIES SCHEME

# M E M B E R S H I P R U L E S



# THE PROPERTY EXPENSES SCHEME



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# SCHEME CONTACTS

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Please refer any questions in relation to Scheme membership, cover or contributions to the following:

Willis Corroon Limited  
Howard House  
Queens Avenue  
Bristol  
BS8 1SN

Telephone : 0845 6010193

Facsimile : 0117 976 9322

Any questions relating to the handling of claims under the Scheme should be referred to:

The NHS Litigation Authority  
5 Pemberton Row  
London EC4A 3BA

Telephone : 0171 842 0611

Facsimile : 0171 842 0620

# MEMBERSHIP RULES

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1. General Description The Property Expenses Scheme was established by the Regulations (as defined below) made pursuant to Section 21 of the National Health Service and Community Care Act 1990.

The Scheme is to be administered on behalf of the Secretary of State by the Administrator which may, in turn, contract with the Scheme Managers to operate some of the day to day procedures of the Scheme.

Members shall be expected to have full knowledge of the Rules and by applying to become Members they are deemed to agree to be bound by them. Subject to the approval of the Secretary of State, these Rules may be amended from time to time by the Administrator.

These Rules and the Schedules hereto constitute the exercise by the Secretary of State of the power of determination afforded him at Regulation (as defined below) 9(2)(e).

2. Definitions and interpretation

2.1 Definitions

In these Rules, unless the context otherwise requires, the following expressions shall have the following meanings:

“*Administrator*” means NHSLA or whosoever is appointed from time to time by the Secretary of State to administer the Scheme;

“*Adverse Incident*” means any event resulting in a Claim;

“*Applicant*” shall have the meaning ascribed to it in Regulation 6(7);

“*Application*” shall have the meaning ascribed to it in Regulation 6(7);

“*Board*” means the board of the Administrator from time to time;

“*Buildings*” means:

- (a) the shell including internal structures, wall finishes, floor finishes, ceiling finishes,
- (b) engineering works including sanitary appliances, services, equipment, disposal, water and heating installations, space heating, air treatment, ventilating, gas, protective and electrical installations, communications, installations, lift and conveyor installations, and fittings and any other property of a similar type including alterations, improvements, extensions and decorations the property of the Member or for which they are responsible at the Premises,
- (c) external works i.e. roads, pavements, kerbs, footpaths, covered footways, pedestrian subways, car parks including multi storey and underground coin-operated barriers, ticket dispensers, kiosks, street lighting, floodlighting, signs and signals, walls, fences, railings, drains, drainage chambers, sewers, pipes, service tunnels, wells, helipads, electrical and gas distribution systems above and below ground, communications systems, telephone cables and data links and any other property of a similar type including alterations improvements extensions and decorations the property of the Member or for which they are responsible at the Premises;

“*Business Interruption Expense*” means a claim arising from an expense detailed at Schedule 3 hereto;

“*Claim*” means any demand, however made, by a Member for monetary compensation in respect of a Qualifying Expense;

“*Claims Paid*” means the basis on which benefits may be made available to Members as stated in Rule 6.4;

“*Contents*” means stock, medical equipment and all other items of general plant, machinery and

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equipment belonging to the Member or held by them in trust or on commission for which they are responsible whilst in or on the Premises;

“*Contract Works Expense*” means a claim arising from an expense of a type detailed or schedule 8 hereto;

“*Contribution*” means the amount which a Member must pay into the Scheme to be eligible for benefits under the Scheme;

“*Date of Settlement*” means the date on which Settlement of all aspects of the Claim occurs;

“*Defined Contingency*” shall mean damage caused by fire, spontaneous fermentation or heating, lightning, explosion, aircraft and other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, escape of water from any tank, apparatus or pipe, impact by any road vehicle or animal, subsidence, ground heave or landslip and theft;

“*Eligible Body*” means a body of the kind described in Regulation 3;

“*Engineering Expense*” means a claim arising from an expense detailed at Schedule 6 hereto;

“*Excess*” means the amount which must be paid by a Member itself in respect of each and every Expense;

“*Expense*” means any demand, however made, by a Member for monetary compensation in respect of a Qualifying Expense;

“*Fidelity Guarantee Expense*” means a claim arising from an expense of a type detailed at Schedule 7 hereto;

“*Fine Arts*” means antiques and objects of art of every nature and description;

“*General Exceptions*” means an exception detailed at Schedule 1 hereto;

“*Goods in Transit Expense*” means a claim arising from an expense of a type detailed at Schedule 5 hereto;

“*Income Generation*” means any activity carried out by an Eligible Body as a result of any directions made by the Secretary of State under the powers afforded him by Section 7 of the Health and Medicines Act 1988;

“*Legionella*” means infections caused by Legionella Pneumophila and other bacteria from the Family Legionellaceae;

“*Member*” means an Eligible Body which is a Member of the Scheme;

“*Member's Payment*” means the sums payable by a Member in respect of any PES Expense as referred to in Rules 7.2 and 9.3;

“*Membership*” means the state of being a Member;

“*Membership Date*” means the date on which Membership commences in accordance with Regulations 6(1) or 6(2) and 6(6);

“*Membership Year*” means, in relation to an Eligible Body, any period of 12 months beginning on 1st April during any part of which that Eligible Body is a member of the Scheme;

“*Money*” means current coin, bank and currency notes; postal and money orders; bankers drafts, cheques, giro drafts and payment orders; travellers cheques, crossed warrants, bills of exchange, securities for money; current postage revenue and national insurance stamps; stamped national insurance cards, national savings certificates, war bonds, premium savings bonds, franking machine

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impressions; credit/charge card sales, vouchers, luncheon vouchers, trading stamps; charge cards, credit cards, VAT input documents; travel tickets, travel warrants, authenticated travel certificates gift tokens, telephone paycards, TV licence stamps and consumer redemption vouchers;

“*Money Expense*” means a claim arising from an expense of a type detailed at Schedule 4 hereto;

“*NHSLA*” means the Special Health Authority established pursuant to the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 by the Secretary of State under the title National Health Service Litigation Authority, to administer the Scheme and shall include where appropriate the Board and any committee or sub-committee of the Board and the officers of NHSLA;

“*Persons*” includes companies, statutory bodies, partnerships, firms, individuals, government departments and other administrative organisations and any other body of persons, whether incorporated or unincorporated;

“*PES Expense*” means any Claim which, in the Administrator’s opinion, is likely to be eligible for funding under the Scheme and/or has Significant Implications and/or may set a legal precedent or is a test case of a Claim;

“*Premises*” means all premises owned, occupied or used by the Member in the United Kingdom;

“*Property*” means Buildings and Contents, as defined herein;

“*Property Damage Expense*” means a claim arising from an expense of a type detailed at Schedule 2 hereto;

“*Qualifying Expense*” means an expense of the kind described in Rule 3;

“*Regulations*” means the National Health Service (Property Expenses Scheme) Regulations 1999 (S.I 1999 No. 4);

“*Relevant Function*” means the function of providing services in England for the purposes of the National Health Service Act 1977 or by virtue of section 7 of the Health and Medicines Act 1988 or under paragraph 14 or 15 of Schedule 2 to the National Health Service and Community Care Act 1990;

“*Relevant Person*” means in respect of a Member, a person employed or engaged by that Member, and shall be taken to include:

- (a) a person under a contract of service or apprenticeship with the Member
- (b) a labour master or person supplied by a labour master
- (c) a person employed by labour only sub-contractors
- (d) a person hired to or borrowed by the Member including volunteer drivers in connection with community bus schemes
- (e) person being a prospective driver whilst driving
- (f) person undertaking study or work experience
- (g) person supplied under any youth training or similar government scheme while working for the Member in connection with the Relevant Function
- (h) director or trustee
- (i) authorised voluntary worker
- (j) committee members or review panel members

“*Risk Management*” means the management of risk with a view to minimising both the occurrence of Expenses and the amount of financial expense arising therefrom;

“*Rules*” means the Rules herein set out as varied from time to time in accordance with Rule 1;

“*Run Off Benefit*” means, subject to the Administrator’s absolute discretion, an entitlement to a benefit which may be purchased by former Members in respect of Expenses reported during the Membership Year but which are not settled within 30 days of the termination of their Membership;

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“*Scheme*” means the Property Expenses Scheme;

“*Scheme Managers*” means Willis Corroon Limited and/or whomsoever is appointed by the Administrator from time to time in relation to all or any part of the Scheme;

“*Secretary of State*” means the Secretary of State for Health;

“*Significant Implications*” means, in relation to an expense, any Expense which is novel, contentious or repercussive;

“*Territorial Limits*” means Great Britain, the Republic of Ireland, the Channel Islands and the Isle of Man;

“*Year*” means the period from 1 April in any calendar year through until 31 March the following calendar year.

## 2.2 Interpretation

All terms defined in the Regulations which are used in these Rules shall bear the same meaning as in the Regulations unless the context requires otherwise and in the event of any conflict or inconsistency between the Regulations and the Rules, the Regulations shall prevail.

In these Rules, a reference to a numbered rule is a reference to the Rule which bears that number in these Rules and a reference to a numbered regulation is a reference to a regulation which bears that number in the Regulations.

Clause headings and the index are for ease of reference only and are not to affect the interpretation of these Rules.

Words denoting the singular include the plural and vice-versa.

## 3. Coverage of the Scheme

Subject to the terms of the Regulations (as amended or varied from time to time), the expenses to which the Scheme applies are any expenses which are incurred by a member

- (a) arising from any loss or damage to its property; and
- (b) is not an expense arising from a liability which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended) the National Health Service (Existing Liabilities Scheme) Regulations 1996 (as amended) the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999.

“*Qualifying Expense*” means, in respect of a member, an expense which falls within the definition thereof at Regulation 4 (2), and which is either a Property Damage Expense, a Business Interruption Expense, a Money Expense, a Goods in Transit Expense, an Engineering Expense, a Fidelity Guarantee Expense or a Contract Works Expense save where in each case a General Exception applies.

## 4. Membership of the Scheme

### 4.1 Eligibility for Membership

A body is eligible to participate in the Scheme if it is a body of the kind described in Regulation 3. The Administrator shall, having regard to the information provided by the Applicant, and to such other factors regarded by the Administrator as material, determine whether or not an Applicant should be admitted as a Member.

### 4.2 Application Forms

The Administrator shall have the power to prescribe a form or forms of application to be delivered

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to the Administrator by Applicants and to require certain information on the Applicant's activity profile in accordance with Regulation 6(4). All Applications shall be made in accordance with Regulation 6(3).

#### 4.3 Date of Commencement of Membership

Membership shall commence in accordance with the provisions of Regulations 6(1) or 6(2) and 6(6).

#### 4.4 Period of Membership

A Member may only terminate its participation in the Scheme in accordance with the provisions of Regulations 7(1) and 7(2).

### 5. Provision of Information

#### 5.1 General

Members will be required to provide (at their own expense) such information to the Administrator and/or the on their activities as may be determined from time to time by the Administrator which information shall include, without limitation, the information referred to in these Rules and in Regulations 6(4) and 10. Members acknowledge and agree that any and all information and data (howsoever held) provided by them to the Administrator may be disclosed without restriction or conditions by the Administrator or either of them to the Administrator, the Secretary of State and their respective officers, agents, employees and sub-contractors. For the avoidance of doubt, any such information provided by Members shall be and remain the property of the Administrator.

#### Cover Voidable

Cover for a Member under the Scheme shall be voidable (in whole or in part) at the Administrator's discretion in the event of misrepresentation, mis-description or non-disclosure in any material fact.

A material fact is any fact which might influence the Administrator in deciding whether or not to grant cover under the Scheme, what the terms should be or what contribution to charge.

#### Alteration

Cover under the Scheme shall also be avoided with respect to any part thereof in regards to which there is any alteration after the commencement of Membership:

- (a) by removal;
- (b) whereby the risk of loss, destruction, damage, accident or injury is increased; or
- (c) where the interest of the Member ceases except by will or operation of law

unless admitted by the Administrator.

If any claim made by the Member or anyone acting on behalf of the Member to obtain any Scheme benefit shall be fraudulent or intentionally exaggerated or if any false declaration or statement shall be made in support thereof no compensation shall be payable hereunder.

#### 5.2 Information Contained in Application Forms

If there is any material change in the details and information contained in the application form, Members are required to notify the Administrator immediately and the Administrator reserves the right, in its absolute discretion, to amend the amount of the contributions from Members and/or withhold any benefits which the Administrator might otherwise have provided.

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### 5.3 Confidentiality of Statistical Data

The Administrator and the Scheme Managers shall ask Members to provide certain statistical information that will enable it to develop the contribution setting process. Whilst this information will be disseminated on a regular anonymous basis to all Members to assist in their Risk Management processes, statistical information on individual Members will only be available to that Member, the Administrator and the Scheme Managers, and the Administrator shall use all reasonable endeavours not to disclose such information to third parties without the prior written consent of that Member or unless such information is required to be disclosed by law or any regulatory requirement or by any regulatory authority .

### 5.4 Claim Reports

Members will be required to meet the reporting frequency and information requirements as defined and published from time to time by the Administrator.<sup>1</sup>

## 6. Benefits Provided by the Scheme

### 6.1 Discretion of the Administrator

All benefits available to Members under the Scheme shall be given in the sole and absolute discretion of the Administrator on behalf of the Secretary of State whose decision in these matters shall be final and binding. These Rules shall not, under any circumstances, be construed to imply that any contract of insurance exists between the Member and the Administrator or that the benefits available under the Scheme are not discretionary. Subject to the total funds available to the Scheme and to the discretion of the Administrator, there shall be no limit to the financial benefits available under the Scheme in any Year.

### 6.2 Benefits

The Administrator may, subject to Rule 6.1, provide funds to make payments permitted under Regulation 9 in respect of any PES Expense.

### 6.3 Limit to Benefits

The Administrator may refuse to provide financial benefits to any Member in accordance with the provisions of Regulation 9(2). In the event that the Administrator refuses to provide benefits in these circumstances, the Member shall have the right of appeal to the Secretary of State within 30 days of the decision of the Administrator for a review of the Administrator's decision, but in all circumstances the decision of the Secretary of State shall be final and binding.

### 6.4 Claims Paid Basis

Subject to Rule 6.1, benefits will be provided under the Scheme on a claims paid basis. This means that in order to receive benefits in respect of a Claim, the Member must have maintained continuous Membership between the following dates (inclusive):

- (a) the date of occurrence of the Adverse Incident which subsequently gives rise to the Claim; and
- (b) the date of Settlement

unless the Member is eligible for the Run Off Benefit in which case the conditions specified in Rules 6.5 shall apply.

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<sup>1</sup> In general, it is intended that no significant extra burden will be placed on Members and that the information collected should be no more than that which a Member conforming to good practice would have readily available.

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#### 6.5 Run Off Benefit for Former Members

If a Member ceases for any reason to be a Member, no benefits shall be available to that former Member for Claims reported during the period of Membership but which are not settled within 30 days of the date of termination of the Membership unless a Run Off Benefit is purchased by the former Member. This benefit may be made available to a former Member under such terms and conditions as the Administrator may, in its absolute discretion, determine at the date the Member ceases to be a Member.

#### 6.6 Contribution with Insurance Policies

If at the time of the happening of any loss, destruction or damage or Expense covered by this Scheme there shall be in existence any insurance of any nature providing indemnity to the Member for such loss, destruction or damage or Expense whether effected by the Member or not then the cover of the Scheme shall be limited to a contribution not exceeding that of the insurer or insurers.

#### 6.7 Rights of the Administrator

On the happening of any loss, destruction or damage in respect of which a Claim is or may be made under this Scheme the Administrator and every person authorised by the Administrator may without thereby incurring any liability and without diminishing the right of the Administrator to rely upon any conditions of this Scheme, enter, take or keep possession of the building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to them any of the property and may keep possession of an deal with such property for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the Member to the Administrator so to do. If the Member or anyone acting on behalf of the Member shall not comply with the requirements of the Administrator or shall hinder or obstruct the Administrator in doing any of the above-mentioned acts then all benefits under this Scheme shall be forfeited. The Member shall not in any case be entitled to abandon any property to the Administrator whether taken possession of by the Administrator or not.

#### 6.8 Subrogation

Any Member under this Scheme shall at the request and expense of the Administrator do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Administrator for the purpose of enforcing any rights and remedies of or of obtaining relief or indemnity from any other parties to which the Administrator shall be or would become entitled or subrogated upon its paying for or making good any loss, destruction or damage, accident or injury under this Scheme whether such acts and things shall be or become necessary or required before or after indemnification by the Administrator. In no event should any Member waive such rights of subrogation against other parties, unless by specific agreement with the Administrator.

#### 6.9 Statutory Requirements, Maintenance and Reasonable Precautions

The Member shall:

- 6.9.1 maintain the Premises, medical and all other machinery, plant and equipment in a satisfactory state of repair;
- 6.9.2 take all reasonable precautions for the safety of the property;
- 6.9.3 take all reasonable precautions to prevent loss, destruction, damage, accident or injury;
- 6.9.4 retain documentation in respect of all purchases and sales.

7. Scheme Limit of Cover and Excess Levels

7.1 Scheme Limit of Cover

The Scheme will not be liable for any amount above the Member's delegated limit, which will be subject to change from time to time, in respect of each and every claim.

Member Income (NHS)	Delegated Limit = Scheme Limit of Cover
Up to £30,000,000	£250,000
£30,000,000 to £80,000,000	£600,000
£80,000,000 and over	£1,000,000

Schedule 2 - Property Damage Expense, Schedule 3 - Business Interruption Expense and Schedule 8 - Contract Works Expense are each subject to the application of separate Limits of Cover in the event of a single Claim involving more than one Schedule. All other Schedules are subject to the single Schedule 2 Limit of Cover or such inner limits as may be detailed in the Schedules.

7.2 Excess Levels Year on Year

- (a) The Scheme will not be liable for the amount of the Member's Excess (or any lesser amount for which an Expense may be settled) shown below in respect of each and every event resulting in an Expense.

Delegated Limit	Schedule 2 Buildings	Schedule 2 Contents	Schedule 4 Money	Schedule 5 Goods in Transit	Schedule 6 Engineering	Schedule 7 Fidelity Guarantee	Schedule 8 Contract Works
£250,000	£20,000	£5,000	£5,000	£5,000	£20,000	£5,000	£20,000
£600,000	£20,000	£10,000	£10,000	£10,000	£20,000	£10,000	£20,000
£1,000,000	£20,000	£20,000	£20,000	£20,000	£20,000	£20,000	£20,000

- (b) In respect of Schedule 3 - Business Interruption Expense only, the Scheme will not be liable in respect of each and every Claim for Loss of Gross Profit or Increase and Additional Increase in Cost of Working incurred for the sole purpose of avoiding or diminishing the interruption of or the interference with the Member's business during a continuous period of 24 hours following the occurrence of the Damage which is the subject of the Expense.
- (c) Single events that result in Expenses being made under two or more Schedules of the Scheme will be subject to the deduction from the relevant proportion of the total Expense, of the excess for each of these Schedules (or any lesser amount for which an Expense may be settled).

This will also be the case in single events resulting in Damage to both Buildings and Contents. The Relevant Excesses will be deducted from the buildings and contents proportions of the total Expense under Schedule 2.

The Excess applicable to an Expense will be the higher of the Excess applicable in the Membership Year the Expense is notified to the Member and the Excess applicable in the Membership Year in which the Expense is settled.

The Administrator may change the Excesses, such changes to be notified to Members not later than 31 October in any Year to become effective from 1 April the following Year.

8. Contributions

8.1 Contribution Assessment

The Administrator shall determine the contribution to be paid by Members having regard to the matters referred to in Regulation 8(2). The Administrator may, in the light of differing and/or special needs of an individual Member or group of Members, create different categories of Member (as defined by the Administrator). The Administrator may then, in its absolute discretion, determine different rates or different periods of contribution such determination to be final and binding on the Members.

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## 8.2 Anniversary Assessments

The amount of Members' contributions will be notified to them in accordance with Regulation 8(3).

## 8.3 Payment Terms

Members' contributions under the Scheme will be paid through the Paymaster Accounts ("PGO") of the Administrator and the Member in accordance with Regulation 8(6). Subject to the provisions of Regulation 8(6), Members shall be offered contribution payment terms on an annual basis in advance or such other basis as the Administrator may determine from time to time and contributions shall be made by transfer from each Member's PGO to the Administrator's PGO.

## 8.4 Risk Management Discounts

The Administrator shall develop Risk Management standards which, if achieved by Members, may qualify Members for contribution discounts. The standards and the rating system shall be published and distributed to all Members. Any discount for which Members qualify will be netted off the following Year's contribution (if the Member is to remain a Member for the following Year), or by way of a credit made to the Member's PGO, such method of payment to be at the Administrator's discretion.

The Administrator shall determine and publish the structure of the discounts for future years in due course.

In the event of a dispute between the Administrator and the Member over the rating attributed to that Member's Risk Management processes and, if any, the resulting Contribution discount, the Member shall have the right of appeal to the Board.

## 8.5 Excess Funds

If, in the view of the Administrator, excess funds have been collected in the previous Year, such funds (or a proportion of those funds) shall be used to offset the Contributions to be paid by Members in a following Year.<sup>2</sup> No monies shall be returned to Members or former Members.

## 8.6 Non Payment of Contributions

The provisions of Regulation 7(3) will apply where any payment which a Member is liable to pay is in arrears.

## 9. Expenses Management

### 9.1 Expenses Reporting Procedures

Forthwith upon notification to a Member of any Expenses which appears likely to be a PES Expense the Member shall notify the Administrator and supply all appropriate documentation to enable the Administrator to determine, in its absolute discretion, whether or not the Expense is likely to be a PES Expense. If the Expense is, in the Administrator's opinion, unlikely to be a PES Expense then the Member shall be responsible for handling the same subject to any protocol or guideline issued from time to time by the Administrator. If the Expense Claim is, in the Administrator's opinion, likely to be a PES Expense then the Administrator shall, unless it determines otherwise in its absolute discretion in respect of any Expense or Expenses, conduct the Expense as referred to in Rule 9.2.

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<sup>2</sup> i.e. Excess funds from Year 1 will be credited no earlier than Year 3. This is to allow Year 1 accounts to be audited. Members will be notified of the amount capable of being offset with the contribution assessment for Year 3.

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From time to time, the Administrator shall publish protocols and guidelines for the manner of reporting Expenses each of which shall be incorporated in and form part of these Rules. The nature of the information required may vary according to the expected value of the Expense and the Excess chosen by the Member.

#### 9.2 PES Expenses

Members shall co-operate with the Administrator and shall provide to the Administrator all such assistance and information which it may require in respect of the conduct of any Expense. Without prejudice to the foregoing, the Administrator shall have the right, on behalf of the Member, to exercise any right which arises whether by virtue of a contract or otherwise in connection with a Qualifying Expense, including in particular, the right to select, instruct and de-instruct legal and other advisers and agree the terms of their retainer, and any right to raise claims or defences, and/or to bring proceedings. Such rights apply in respect of all PES Expenses notified at any time and from time to time to the Administrator. In addition, and at no charge, the Member shall give the Administrator full access to all documents, records, computer databases or other property, to premises and to employees.

#### 9.3 Payment in respect of PES Expenses

The Administrator shall keep records regarding the costs of individual PES Expenses which can be taken into account when determining the contribution payable by the Member towards any costs or payments in respect of the PES Expense and the amount of the payment in respect of such PES Expense.

Payment in respect of a PES Expense shall unless the Administrator otherwise directs be made by the Member forthwith to whomsoever the Administrator shall direct on notification by the Administrator to make the payment and the Member shall receive reimbursement in respect of such payment net of the Member's contribution towards the amount of such payment as determined by the Administrator in its absolute discretion but including, without limitation, the amount referred to as payable by the Member under Rules 7.1 and 7.2.

In determining the Member's Payment, the Administrator shall take into account whether the Member has complied with the Regulations and the Rules and in particular, but without limitation, Rule 9.2. Where more than one Member has incurred PES Expenses the Administrator shall apportion the amount of such contribution in whatever manner it may decide. The Administrator shall also take account of sums paid as specified under Rule 9.5.

If the Administrator so decides in its absolute discretion in respect of any Expense or Expenses, any payment in respect of a Qualifying Expense shall be made direct to third parties as aforesaid by the Administrator, the Member shall make the Member's Payment to the Administrator or as it shall direct forthwith upon notification by the Administrator.

#### 9.4 Expenses Settled Below the Excess

Expenses incurred below the amount of the Excess are a matter for the Member, subject only to the reporting requirements published by the Administrator from time to time.

#### 9.5 Legal Advice

As referred to in Rule 9.2, the Administrator shall appoint on its own behalf and on behalf of any Member legal and other advisors selected by the Administrator either generally to act in respect of PES Expenses or in relation to particular PES Expenses or categories of PES Expenses.

In the event that the Administrator shall appoint any legal advisor or other advisor as referred to above then the Administrator shall be entitled to pay such legal advisor or other advisor on whatever terms it considers appropriate and to allocate and apportion the amount of any sums so paid

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between such PES Members as it considers appropriate. Such sums so allocated will be taken into account in determining the Member's Payment under Rule 9.3.

#### 9.6 Expense Management Appeals Procedure

In the event that a Member disagrees with the view of an employee, agent or sub-contractor of the Administrator in the management of an Expense, the Member shall have the right of appeal to the Board which shall review the Expense under dispute and provide a ruling.

#### 9.7 Mitigation

Members agree to do all things reasonably in their power to eliminate or mitigate any cost, expense or liability in respect of any Expense. In particular, any monies recovered from any other source in respect of an Expense shall be set off against any benefits available under the Scheme, unless agreed otherwise by the Administrator beforehand.

### 10. Funding

The Administrator shall establish funding (consistent with a Claims Paid funding method) for those Claims that the Administrator believes will be settled within the forthcoming Year. The Administrator shall establish a fluctuation reserve, the purpose of which will be to smooth, on a Year on Year basis, the Contribution payable by Members and to protect the Scheme against an unforeseen run of payments. The size of the fluctuation reserve shall be determined by the Administrator but subject always to any limitations placed upon it by HM Treasury.

### 11. Set-Off and Insolvency

#### 11.1 Set-Off

The Administrator may set off any amount due from a Member or former Member against any amount due to or agreed to be paid to such Member or former Member.

#### 11.2 Insolvency of a Member

In the event of the winding up of a Member or the taking of other analogous insolvency proceedings in relation to a Member:

- (a) no further benefits will be available to that Member; and
- (b) its Membership shall terminate forthwith.

### 12. Expulsion from Membership

#### 12.1 Right of Expulsion

Without prejudice to Regulation 7(3), upon giving not less than 28 days' notice to the Member, the Administrator shall have the right to expel any Member from Membership for a gross breach of the Rules or Regulations or whose conduct or continued Membership is, in the opinion of the Administrator, detrimental to the efficient administration of the Scheme or to the interests of the other Members. Such expulsion shall not affect any outstanding obligations of the Member to the Scheme. The date of termination of Membership shall be the date on which the notice expires (date of exit) but during the period of such notice the Member shall not be entitled to any benefits under the Scheme.

#### 12.2 Right of Appeal against Expulsion

A Member under notice of expulsion shall have the right to appeal to the Board within 30 days of such notice and thereafter to the Secretary of State within 30 days of the decision of the Board, against the decision to expel the Member. In all circumstances, the decision of the Secretary of State shall be final and binding.

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### 12.3 Outstanding Claims

In the event of the expulsion of a Member under Rule 12.1, for the avoidance of any doubt, no financial liability shall rest with the Administrator for outstanding Expenses which have not been paid or potential Expenses incurred against the Member, whether notified to the Administrator or not, or any unexpired Contributions to the Scheme unless the Administrator determines otherwise.

## 13. Guidance on Specific Issues

The Administrator shall, from time to time, publish guidance on specific issues concerning the qualification for and the extent of benefits available under the Scheme.

## 14. General

### 14.1 Notices

A notice to be served on the Administrator may be served by sending the notice by recorded delivery addressed to the Administrator at 5 Pemberton Row, London EC4A 3BA, or by personal delivery to that address.

A notice to be served on a Member may be served by sending the notice by recorded delivery addressed to the Member at the address last notified to the Administrator or by personal delivery to that address.

Any such notice shall be deemed to have been served, if sent by post, on the day after it was posted or if delivered personally, on the date of delivery.

### 14.2 Non Disclosure and Misrepresentation

The Administrator shall be entitled to withdraw all benefits in the event of non disclosure of information or misrepresentation by a Member at any time unless the Member is able to establish to the satisfaction of the Administrator that such non disclosure or misrepresentation was free from any fraudulent conduct or intent to deceive.

In such circumstances, the Contribution payable by the Member and the Excess applicable to that Member may be adjusted in the absolute discretion of the Administrator to those which would have applied had such circumstances been disclosed.

### 14.3 Liaison and Co-operation

Members shall fully co-operate and liaise with the Administrator and the Administrator and take such steps as the Administrator and/or the may request in connection with, inter alia, the administration of the Scheme including, without limitation, by responding promptly to any requests for information.

## 15. Governing Law

These Rules shall be governed by and construed in accordance with English Law.

# SCHEDULE 1

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## General Exceptions to Qualifying Expenses

1. Any claim for an Expense brought by a Member shall not be a Qualifying Expense for the purposes of the Scheme to the extent that such Expense arises from:
  - 1.1 loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature 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;
    - (c) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
    - (d) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
  - 1.2 any Expense arising from failure of plant and equipment or other related costs as a result of the Year 2000 date recognition problem unless the Member can provide written evidence of compliance with any manufacturers' recommendations, and demonstrate to the satisfaction of the Administrator that action has been taken to comply with all relevant guidance produced by the Department of Health and any Central Government Agencies.



# SCHEDULE 2 – PROPERTY DAMAGE EXPENSE

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Qualifying Expense :

1. **Definition**

A Property Damage Expense will cover accidental loss, destruction of or damage (hereinafter termed "Damage") to the Property of the Member subject to the Scheme Limit of Cover, other than Damage occasioned by an excluded cause as detailed in Paragraph 2 to this Schedule.

2. **Exceptions to Schedule 2**

A Property Damage Expense will not include:

2.1 Damage caused by:

- (a) inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, its own faulty or defective design or materials;
- (b) faulty or defective workmanship, operational error or omission on the part of the Member or any Relevant Person;

but this shall not exclude Damage resulting from an ensuing cause and not otherwise excluded.

2.2 Damage caused by:

- (a) corrosion, rust, wet or dry rot, shrinkage, evaporation, loss of weight, dampness, dryness, marring, scratching, vermin or insects;
- (b) change in temperature, colour, flavour, texture or finish;
- (c) joint leakage, failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers, superheaters, pressure vessels or any range of steam and feed piping in connection therewith;
- (d) its own mechanical or electrical breakdown or derangement;

but this shall not exclude:

- (i) such Damage which itself results from a Defined Contingency or from any other accidental loss, destruction or damage and is not otherwise excluded;
- (ii) subsequent Damage which itself results from a cause not otherwise excluded.

2.3 Damage caused by pollution or contamination but this shall not exclude destruction of or damage to Property, not otherwise excluded, caused by:

- (a) pollution or contamination which itself results from a Defined Contingency;
- (b) a Defined Contingency which itself results from pollution or contamination.

2.4 Damage caused by:

- (a) normal settlement or bedding down of new structures;
- (b) acts of fraud or dishonesty;
- (c) disappearance, unexplained or inventory shortage, misfiling or misplacing; of information or clerical error;
- (d) theft not traceable to a specific event.

2.5 Damage in respect of portable property in the open, fences and gates by wind, rain,

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hail, sleet, snow, flood or dust, unless such property is designed or intended for use in the open.

2.6 Damage to Property:

- (a) by fire resulting from its undergoing any process involving the application of heat;
- (b) (other than by fire) resulting from its undergoing any process of production, packing, treatment, testing, commissioning, servicing or repair.

2.7 Damage:

- (a) caused by freezing;
- (b) caused by escape of water from any tank, apparatus or pipe;
- (c) caused (other than by fire or explosion) by malicious persons not acting on behalf of or in connection with any political organisation;

in respect of any building which is empty or not in use unless such building is inspected at least once a week by the Member or by their authorised representatives.

2.8 Damage to glass (other than fixed glass), china, earthenware, marble or other fragile or brittle objects but this shall not exclude Damage caused by a Defined Contingency.

2.9 Damage to:

- (a) vehicles licensed for road use (including accessories permanently fixed thereon) caravans, trailers, railway locomotives, rolling stock, water craft or aircraft;
- (b) property or structures in course of construction or erection and materials or supplies in connection with all such property in course of construction or erection;
- (c) livestock, growing crops or trees, other than by fire, lightning, explosion or aircraft;

unless specifically mentioned as covered in this Schedule 2.

2.10 Damage to Property which at the time of the happening of Damage is insured by or would be for the existence of this Schedule 2 be insured by any marine policy or policies except in respect of any excess beyond the amount which would have been payable under the marine policy or policies.

2.11 Damage to any Property more specifically insured on behalf of the Member.

2.12 Consequential loss or damage of any kind or description except loss of rent when such loss is included in the cover under this Schedule 2.

2.13 Damage occasioned by nationalisation, confiscation, requisition, seizure or destruction by the Government or any Public Authority.

2.14 Damage by fire to any portion of the electrical plant or apparatus caused by self-ignition, leakage of electricity, short circuiting or over-running but this exception shall only apply to that part of the electrical plant or apparatus in which self-ignition, leakage of electricity, short circuiting or over-running occurs.

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### 3. Extentions to Schedule 2

A Property Damage Expense will include:

- 3.1 Subsidence or ground heave of the site on which the Property stands or landslip but excluding:
- (a) Damage caused by:
    - (i) coastal erosion;
    - (ii) collapse, cracking, shrinkage or settlement of buildings or any part thereof;
    - (iii) defective design or inadequate construction of foundations;
    - (iv) demolition, structural alteration or repair;
    - (v) settlement or movement of made-up ground;
  - (b) Damage to forecourts, car parks, driveways, footpaths, walls, gates, hedges or fences unless such Damage occurs also to a building.

### 3.2 Damage to Computer Equipment

Loss, destruction or damage from any accidental or malicious cause not otherwise excluded whilst at any Premises in the Territorial Limits and to data carrying materials anywhere in the world.

The Scheme shall not be liable under this sub paragraph 3.2 for:

- (a) Loss of use of the computer equipment or other consequential loss or liability of any nature whatsoever;
- (b) Damage recoverable under any guarantee or maintenance, rental, hire or lease agreement.

### 3.3 Reinstatement

It is hereby agreed that in the event of Buildings and/or Contents being destroyed or damaged the basis upon which the amount payable is to be calculated shall be the reinstatement of the property destroyed or damaged, subject to the following special provisions and subject also to the exceptions and limitations of the Scheme except insofar as the same may be varied hereby.

For the purposes of the Scheme "*Reinstatement*" shall mean the carrying out of the after mentioned work, namely:

- (a) Where property is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.
- (b) Where property is destroyed, the rebuilding of the property, if a Building, or, in the case of other property, its replacement by similar property, in either case in a condition equal to but not better or more extensive than its condition when new.

### Special Provisions

- (i) The work of reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Member subject to the liability of the Scheme not being thereby increased) must be

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commenced and carried out with reasonable despatch; otherwise no payment beyond the amount which would have been payable under the Scheme if this sub paragraph had not been incorporated therein shall be made.

- (ii) When any property is damaged or destroyed in part only the liability of the Scheme shall not exceed the sum representing the cost which the Scheme could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) No payment beyond the amount which would have been payable under this Schedule 2 if this sub paragraph had not been incorporated therein shall be made until the cost of reinstatement shall have been actually incurred.

Note: The provisions of this Reinstatement sub paragraph do not apply to a Relevant Person's, visitors' or customers' personal effects, pedal cycles, tools and instruments.

#### 3.4 All Other Contents

For the purposes of this Schedule 2, Contents is to include "All Other Contents" being:

- (a) deeds, documents, manuscripts, business books, medical records and mechanical drawings but only for the value of the materials as stationery together with the cost of clerical labour expended in writing up and not for the value to the Member of the information contained therein.
- (b) computer systems records but only for the value of the materials together with the cost of clerical labour and computer time expended in reproducing such records (excluding any expenses in connection with the production of information to be recorded therein) and not for the value to the Member of the information contained therein, for an amount not exceeding £50,000.
- (c) patterns, models, moulds, plans and designs but only for the value of the materials together with the cost of labour expended in reinstatement.
- (d) Relevant Person's, visitors', customers' and patients' personal effects, pedal cycles, tools, instruments and the like, cover hereunder being restricted to a maximum sum of £1,000 in respect of any one person.

#### 3.5 Architects', Surveyors', and Consultants' Fees

The Scheme includes architects', surveyors', consulting engineers', legal and other fees necessarily and reasonably incurred in the reinstatement of the property insured consequent upon its destruction or damage but not for preparing any claim.

#### 3.6 Debris Removal

The Scheme includes costs and expenses necessarily incurred by the Member with the consent of the Administrator in:

- (a) removing debris
- (b) dismantling and/or demolishing
- (c) shoring up or propping
- (d) the cleaning of drains, sewers and other underground services
- (e) site clearing or cleaning up following accidental leakage
- (f) removing debris of contents of any premises forming part of the property such contents not being the property of the Member

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- (g) decontamination and/or commissioning of the property.

The Scheme will not pay for any costs or expenses:

- (i) incurred in removing debris elsewhere than from the site of such property destroyed or damaged and the area immediately adjacent to such site;
- (ii) arising from pollution or contamination of property not protected by this Scheme.

### 3.7 Temporary Removal and Transit

The Scheme includes Contents whilst temporarily removed to any premises not in the Member's occupation and whilst in transit by road, rail or inland waterway within the Territorial Limits for the following purposes:

- (a) repair, service or cleaning
- (b) temporary storage
- (c) use in connection with the Relevant Function by a representative of the Member or any other party authorised by the Member including patients
- (d) relocation between premises of the Member, where the property remains at the risk of the Member
- (e) exhibition or demonstration.

In no event will the liability of the Scheme exceed £100,000 for any one loss from which the relevant Scheme Excess will be deducted.

This clause does not cover:

- (i) explosive goods of a dangerous nature and Money;
- (ii) loss of property resulting from dishonesty, fraudulent actions, trick or device or other false pretence of any Relevant Person;
- (iii) loss of property conveyed in vehicles or trailers owned or operated by the Member arising from theft or attempted theft
  - (a) from or on an unattended vehicle or trailer unless all doors, windows and other means of access have been secured and locked and alarm (if any) activated and where reasonably practical the property is concealed from sight;
  - (b) from or on an unattended vehicle or trailer left unattended at all times out of working hours unless all doors, windows and other means of access have been secured and such vehicle or trailer is:
    - (1) garaged in a securely closed and locked building;
    - (2) parked in a yard which is fully enclosed and securely closed and locked;
    - (3) property covered by Schedule 5 - Goods in Transit;
    - (4) property in or on soft topped open sided vehicles or trailers owned or operated by the Member if caused by:
      - (a) storm, tempest, water, hail, frost or snow;

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- (b) theft or attempted theft unless also involving theft of the vehicle or trailer;
  - (c) malicious persons when the vehicle or trailer is left unattended between the hours of sunset and sunrise.

### 3.8 Portable Equipment Outside the Territorial Limits

The Scheme includes portable equipment being the property of the Member or for which it is responsible whilst at any location outside the Territorial Limits and whilst in transit when being used in connection with the Relevant Function.

In no event will the liability of the Scheme exceed £50,000 for any one loss and £5,000 any one item, from which the relevant Scheme Excess will be deducted.

### 3.9 Designation of Property

For the purpose of determining, where necessary, the item under which any property is included, the Administrator agrees to accept the designation under which such property has been entered in the Member's books.

### 3.10 Miscellaneous Properties Extensions

The Scheme includes telephone, gas, water and electrical instruments, meters, piping, cabling and the like, and all accessories thereof, including similar property in adjoining yards or roadways or underground and pertaining to the Buildings or Contents included by this Schedule 2, all property of the Member or for which the Member is responsible.

### 3.11 General Interest Clause

In addition to the Member other parties may be interested in the protection by this Scheme. The party/parties and nature and extent of such interest is to be declared in the event of loss.

### 3.12 Local Authorities

The cover extends to include such additional cost of reinstatement of the destroyed or damaged property as may be incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any act of parliament or with bye-laws of any municipal or local authority provided that

- (a) The amount recoverable under this sub paragraph shall not include:
  - (i) the cost incurred in complying with any of the aforesaid regulations or bye-laws
    - (a) in respect of destruction or damage occurring prior to the granting of this clause
    - (b) in respect of destruction or damage not covered by the Scheme
    - (c) under which notice has been served upon the Member prior to the happening of the destruction or damage
    - (d) in respect of undamaged property or undamaged portions of property other than foundations;
  - (ii) the additional cost that would have been required to make good the property damaged or destroyed to a condition equal to its condition when

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new had the necessity to comply with any of the aforesaid regulations or bye-laws not arisen;

(iii) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reasons of compliance with any of the aforesaid regulations or bye-laws.

(b) The work of reinstatement must be commenced and carried out with reasonable despatch and in any case must be completed within twelve months after the destruction or damage or within such further time as the Administrator may (during the said twelve months) in writing allow and may be carried out wholly or partially upon another site (if the aforesaid regulations or bye-laws so necessitate) subject to the liability of the Scheme under this clause not being thereby increased.

### 3.13 Loss of Metered Water

The Scheme includes loss of metered water for which the Member is charged by the Water Authority following loss of or damage to the building and/or contents of the Member's Premises or used for the extinguishment of fire affecting the property resulting from a cause not otherwise excluded occurring during the Membership Year and on or after the Membership Date subject to a limit of £25,000 any one event but excluding the cost of water lost due to a leakage from or/a bursting of an underground pipe.

### 3.14 72 Hour Clause

For the purpose of the application of the Excess it is agreed that:

- (a) Loss or damage arising from one cause which affects one or more premises of the Member;
- (b) Loss or damage to property arising during any one period of 72 consecutive hours and caused by storm, tempest, flooding or escape of water from tanks, apparatus or pipes;

shall be deemed to be one loss.

### 3.15 Fine Arts

The Scheme extends to include Damage in respect of Fine Arts up to £5,000 any one item and in total £20,000 any one loss.

### 3.16 Patients' Valuables

The Scheme includes Damage to articles of jewellery, platinum and precious metals, gold and silver deposited in a proprietary safe.

The maximum amount payable shall not exceed £1,000 any one patient.

### 3.17 Outdoor Property

The Scheme includes Damage to the following at the Premises:

- (a) outdoor trees, shrubs and plants and landscaping
- (b) signs other than those attached to buildings

The Scheme will pay up to £2,500 for any one event. The most the Scheme will pay for any one tree, shrub or plant including the cost of removing or carrying it away is £250.

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3.18 Fire Extinguishing Costs

The Scheme includes fire extinguishing expenses including the cost of replacing sprinkler heads and other fire extinguishing appliances rendered necessary as a result of fire.

3.19 Changing Locks

The Scheme includes the cost of changing locks following the theft of keys from the premises.

3.20 Damage by Theft to Buildings

The Scheme includes damage by theft to Buildings for which the Member is liable.

3.21 Accidental Discharge of Gas Systems

The Scheme includes the cost of refilling the cylinder(s) of any gas flooding systems installed solely for the protection of computer equipment media and computer records programs and data arising out of the accidental discharge of such system.

The maximum amount payable by the Scheme under this clause shall not exceed £5,000 any one loss.

3.22 Breakage of Fixed Glass including

- (a) the cost of boarding up necessarily incurred
- (b) the expense of removal and reinstatement of obstructions to the replacement of glass
- (c) damage to window and door frames

Provided that:

- (i) such damage or expense follows upon breakage of fixed glass for which there is a valid claim under this sub paragraph 3.22.

But excluding breakage of glass as follows:

- (ii) otherwise insured by any other policy effected by or on behalf of the Member (where permissible);
- (iii) in light fittings, signs, vehicles, vending machines or stock in trade;
- (iv) in empty or disused premises;
- (v) caused by workmen effecting alterations or repairs on the premises;
- (vi) in transit or while being fitted.

3.23 Temporary Removal (Deeds and Documents)

This Schedule 2 insofar as it applies to deeds and other documents (including stamps thereon) manuscripts plans and writings of every description and books (written and printed) extends to include such property whilst temporarily removed to any premises not in the Member's occupation and whilst in transit within the Territorial Limits provided that at any one situation the limit under this sub paragraph 3.23 shall not exceed £25,000.

# SCHEDULE 3 – BUSINESS INTERRUPTION EXPENSE

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Qualifying Expense :

1. **Definition**

1.1 A Business Interruption Expense will cover accidental loss or destruction or damage (hereinafter in this Schedule 3 termed “Damage”) to the Property of the Member as covered in Schedule 2 (Property Damage Expense) which shall result in the following:

- (a) Loss of Gross Profit (Income Generation only)
- (b) Increase in Cost of Working (all activities in connection with the Relevant Function)
- (c) Additional Increase in Cost of Working (all activities in connection with the Relevant Function)

1.2 Settlement Provisions

Scheme cover under this Schedule 3 is limited to loss of Gross Profit (Item 1) due to (a) REDUCTION IN TURNOVER and (b) INCREASE and ADDITIONAL INCREASE IN COST OF WORKING (Items 2 and 3) and the amount payable hereunder shall be

Item 1 IN RESPECT OF REDUCTION IN TURNOVER the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall in consequence of the Damage fall short of the Standard Turnover

Item 2 IN RESPECT OF INCREASE IN COST OF WORKING the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided

Item 3 IN RESPECT OF ADDITIONAL INCREASE IN COST OF WORKING to the additional expenditure (beyond the amount payable under Item 2) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage.

less any sum saved during the Indemnity Period in respect of the charges and expenses of the Member payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

1.3 Specific Definitions

**GROSS PROFIT.** The amount by which the sum of the amount of the Turnover and the amounts of the closing stock and work in progress shall exceed the sum of the amounts of the opening stock and work in progress and the amount of the Specified Working Expenses.

Note 1 The amounts of the opening and closing stocks and work in progress shall be arrived at in accordance with the Member's normal accountancy methods due provision being made for depreciation.

Note 2 The words and expressions used in this definition shall have the meaning usually attached to them in the books of account of the Member.

Note 3 To the extent that the Member is accountable to the tax authorities for Value Added Tax all terms in this Schedule 3 shall be exclusive of such tax.

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**TURNOVER.** The money paid or payable to the Member for goods sold and delivered and for services rendered in course of the Relevant Function at the Premises;

<b>RATE OF GROSS PROFIT</b> The Rate of Gross Profit earned on the turnover during the financial year immediately before the date of the Damage;	(to which such adjustments shall be made as may be necessary to provide for the trend of the Member's business and for variations in or other circumstances affecting the Member's business either before or after the Damage or which would have affected the Member's business had the Damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative before of the Damage)
<b>ANNUAL TURNOVER</b> The Turnover during the twelve months immediately before the date of the Damage;	
<b>STANDARD TURNOVER</b> The Turnover during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period	

**INDEMNITY PERIOD.** The period beginning with the occurrence of the Damage and ending not later than 24 months thereafter during which the results of the Member should be affected in consequence of the Damage.

#### 1.4 Clauses - Applicable to Income Generation

##### (a) Alternative Premises

If during the Indemnity Period goods shall be sold or services be rendered or accommodation provided elsewhere than at the premises for the benefit of the business either by the Member or by others on his behalf the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Gross Profit during the Indemnity Period.

##### (b) Professional Accountants

Any particulars or details contained in the Member's book of account or other business books or documents which may be required by the Administrator's for the purpose of investigating or verifying any claim hereunder may be produced by professional accountants if at the time they are regularly acting as such for the Member and their report shall be prima facie evidence of the particulars and details to which such report relates.

The Scheme will pay to the Member the reasonable charges payable by the Member to their professional accountants for producing such particulars or details or any other proofs, information or evidence as may be required by the Administrator's and reporting that such particulars or details are in accordance with the Member's book of account or other business books or documents provided that the sum of the amount payable under this clause.

## 2. Exceptions to Schedule 3

A Business Interruption Expense will not include:

### 2.1 Damage caused by:

- (a) inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, its own faulty or defective design or materials;
- (b) faulty or defective workmanship, operational error or omission on the part of the Member or any Relevant Person;

but this shall not exclude Damage arising from an ensuing cause and not otherwise excluded.

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- 2.2 Damage caused by:
- (a) corrosion, rust, wet or dry rot shrinkage, evaporation, loss of weight, dampness, drying, marring, scratching, vermin or insects;
  - (b) change in temperature, colour, flavour, texture or finish;
  - (c) joint leakage, failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers, superheaters, pressure vessels or any range of steam and feed piping in connection therewith;
  - (d) its own mechanical or electrical breakdown or derangement;
  - (e) the deliberate act of a supply undertaking in withholding the supply of water, gas, electricity, fuel or telecommunications services.
- But this shall not exclude loss resulting from:
- (i) such Damage which itself results from a Defined Contingency or from any other accidental loss, destruction or damage and is not otherwise excluded;
  - (ii) subsequent Damage which itself results from a cause not otherwise excluded.
- 2.3 Pollution or contamination but this shall not exclude loss resulting from destruction or damage to property used by the Member at the Premises for the purpose of the Relevant Function not otherwise excluded, caused by:
- (a) pollution or contamination at the Premises which itself results from a Defined Contingency;
  - (b) a Defined Contingency which itself results from pollution or contamination.
- 2.4 Damage caused by:
- (a) normal settlement or bedding down of new structures;
  - (b) acts of fraud or dishonesty;
  - (c) disappearance, unexplained or inventory shortage, misfiling or misplacing or information or clerical error;
  - (d) theft not traceable to a specific event.
- 2.5 Damage in respect of a building or structure caused by its own collapse or cracking unless resulting from a Defined Contingency and not otherwise excluded.
- 2.6 Damage in respect of portable property in the open, fences and gates by wind, rain, hail, sleet, snow, flood or dust, unless such property is designed or intended for use in the open.
- 2.7 Damage to Property:
- (a) by fire resulting from its undergoing any process involving the application of heat;
  - (b) (other than by fire) resulting from its undergoing any process of production, packing, treatment, testing, commissioning or servicing.
- 2.8 Damage:
- (a) caused by freezing;

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- (b) caused by escape of water from any tank, apparatus or pipe;
  - (c) caused (other than by fire or explosion) by malicious persons not acting on behalf of or in connection with any political organisation;

in respect of any building which is empty or not in use, unless such building is inspected at least once a week by the Member or their authorised representative.

2.9 Damage in respect of:

- (a) glass (other than fixed glass), china, earthenware, marble or other fragile or brittle objects;
- (b) railway locomotives, rolling stock, water craft or aircraft;
- (c) property or structures in course of construction or erection and materials or supplies in connection with all such property in course of construction or erection;
- (d) livestock, growing crops or trees, other than by fire, lighting, explosion or aircraft;

but this shall not exclude Damage caused by a Defined Contingency and not otherwise excluded.

3. **Extensions to Schedule 3**

A Business Interruption Expense will include:

3.1 Damage caused by subsidence or ground heave of the site on which the Property stands or landslip but excluding:

- (a) Damage caused by:
  - (i) collapse, cracking, shrinkage or settlement of buildings or any part thereof;
  - (ii) coastal erosion;
  - (iii) defective design, inadequate construction of foundations;
  - (iv) demolition, structural alteration or repair;
  - (v) settlement or movement of made-up ground.
- (b) Damage to forecourts, car parks, driveways, footpaths, walls, gates, hedges or fences unless Damage occurs also to a building.

3.2 Notifiable Diseases and Other Restrictions

The following occurrences, diseases or accidents are deemed to be Damage:

- (a) (i) Any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises which causes restrictions on the use of the Premises on the order or advice of the competent local authority;
- (ii) Any occurrence of Legionnaires Disease at the premises;
- (iii) Any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease which causes restrictions on the use of the Premises on the order or advice of the competent local authority.

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- (b) The discovery of vermin or pests at the Premises which causes restrictions on the use of the Premises on the order or advice of the competent local authority.
  - (c) Any accident causing defects in the drains or other sanitary arrangements at the Premises which causes restrictions on the use of the Premises on the order or advice of the competent local authority.
  - (d) Any occurrence of murder, suicide, rape, body injury or kidnap at the Premises.

Special Provisions Applicable to this sub paragraph 3.2 are:

- (a) "*Notifiable Disease*" shall mean illness sustained by any person resulting from:
  - (i) food or drink poisoning, or
  - (ii) any human infections (excluding MRSA) or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition), an outbreak of which the competent local authority has stipulated shall be notified to them.
- (b) For the purpose of this sub paragraph 3.2:
  - (i) Indemnity Period shall mean the period during which the performance of the Relevant Function shall be affected in consequence of the Damage, beginning with the date from which the restrictions on the premises are applied (or in the case of sub paragraph 3.2 (d) above, with the occurrence of the incident) and ending not later than the Indemnity Period thereafter.
  - (ii) The Indemnity Period shall be three months.
- (c) The Scheme shall not be liable for any costs incurred in the cleaning, repair, replacement, recall or checking of property.
- (d) The Scheme shall only be liable for the loss arising at those Premises which are directly subject to the Damage.

### 3.3 Explosion of Vessels under Steam Pressure, at the Premises.

For the purpose of this sub paragraph 3.3:

*"Explosion"* shall mean the sudden and violent rending of the permanent structure of the plant by force of internal steam pressure causing bodily displacement of any part of the structure together with forcible ejection of the contents.

The undernoted defects do not themselves constitute explosion even though repair or replacement may be necessary but explosion arising from any such defect is not excluded.

The defects referred to above are:

- (a) wearing away or wasting of the material of the plant by leakage, corrosion, action of fuel or otherwise;
- (b) slowly developing, deformation or distortion of any part of the plant;
- (c) cracks, fractures, blisters, laminations, flaws or grooving even when accompanied by leakage;
- (d) failure of joints.

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#### 3.4 Telecommunications

The Scheme includes loss arising from interruption of or interference with the Relevant Function carried on at the Premises by the Member.

The Scheme also includes the accidental failure of the public supply of telecommunications services (other than satellite services) at the incoming line, terminals or receivers at the Premises.

This sub paragraph 3.4 excludes any failure:

- (a) which does not involve a cessation of supply for at least 24 consecutive hours;
- (b) due to an Excluded Cause.

For the purposes of this sub paragraph 3.4, "*Excluded Causes*" includes:

- (a) Loss resulting from failure caused by:
  - (i) the deliberate act of any supply undertaking or by the exercise by any such undertaking of its power to withhold or restrict supply or services;
  - (ii) strikes or any labour or trade dispute;
  - (iii) drought;
  - (iv) other atmospheric or weather conditions, but this shall not exclude failure due to damage to equipment caused by such conditions.

#### 3.5 Action by the Police Authority

Following a danger or disturbance in the vicinity of the Premises whereby access thereto shall be prevented, any such occurrence being deemed to be Damage, provided that there shall be no liability under this sub paragraph 3.5 for loss resulting from interruption of the Member's Business during the first full working day of the Indemnity Period.

#### 3.6 Accidental Failure of the supply of Electricity at the terminal ends of the Public Supply undertaking's service feeders at the Premises not occasioned by:

- (a) the deliberate act of any supply authority nor by the exercise by any such authority of its power to withhold or restrict supply;
- (b) any industrial action;

provided that no liability shall attach under this sub paragraph 3.6 unless the duration of such accidental failure exceeds thirty minutes.

#### 3.7 Accidental Failure of the supply of Gas at the Gas Board's meters at the Premises not occasioned by:

- (a) the deliberate act of any supply authority nor by the exercise by any such authority of its power to withhold or restrict supply;
- (b) any industrial action;

provided that no liability shall attach under this sub paragraph 3.7 unless the duration of such accidental failure exceeds thirty minutes.

#### 3.8 Accidental Failure of the supply of Water at the Water Authority's main stop cock at the Premises not occasioned by:

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- (a) the deliberate act of any supply authority nor by the exercise by any such authority of its power to withhold or restrict supply;
  - (b) any industrial action;
  - (c) drought;

provided that no liability shall attach under sub paragraph 3.8 unless the duration of such accidental failure exceeds thirty minutes.

### 3.9 Incompatibility of Data and/or programs

Where Damage to computer equipment results in undamaged data and/or programs being incompatible with the replacement equipment the Scheme will pay for either:

- (a) cost of replacement of data carrying materials including data and/or programs contained thereon
- (b) modifications to the replacement equipment

whichever is the lesser provided that the Scheme cover shall not exceed £50,000 any one loss.

### 3.10 Property Elsewhere

Property of Member whilst stored anywhere in the Territorial Limits elsewhere than at the Premises.

### 3.11 Transit

Property of the Member whilst in transit by road, rail or inland waterway in the Territorial Limits but it is understood that damage arising from impact to or collision with the conveying road or rail vehicle or waterborne craft is specifically excluded from this extension.

### 3.12 Prevention of Access

Property in the vicinity of the Premises destruction of or damage to which shall prevent or hinder the use of the Premises or access thereto whether the Premises or property of the Member shall be damaged or not.

### 3.13 Bombscare and Unlawful Occupation

Loss resulting from interruption of or interference with the Relevant Function in consequence of access to or use of the Member's Premises being hindered or prevented due to the Premises or property in the vicinity of the premises or any right of way being:

- (a) occupied by terrorists or persons thought to be terrorists;
- (b) unlawfully occupied by third parties except in the course of a dispute between any employer and employee or group of workers thought to contain or actually contain harmful device provided that the police are immediately informed;
- (c) thought to contain or actually contain harmful device provided that the police are immediately informed;
- (d) closed down or sealed off in accordance with instructions issued by the police or by any other statutory body except where the cause of such closure or sealing off is

- 
- (i) the condition of or the Relevant Function carried on within the property or any premises owned or occupied by the Member
  - (ii) the Member's non compliance with a prior order of the police or any statutory body
  - (iii) action taken as a result of drought or diseases or other hazards to health.

provided that

- (a) The Scheme shall not be liable for:
  - (i) loss arising from any cause within the control of the Member;
  - (ii) loss as a result of physical loss, destruction or damage to property;
  - (iii) loss which is a direct result of repairs or maintenance being carried out to property as a result of inherent defect or wear and tear;
  - (iv) any incident involving prevention or hindrance of access or use for less than three hours duration;
- (b) for the purposes of this extension only the Indemnity Period shall not exceed 48 hours;
- (c) after the application of all other terms, conditions and provisions the liability under this extension in respect of any one occurrence shall not exceed £10,000.

#### 3.14 Unspecified Customers/Suppliers

The consequences of Damage at the premises of any of the Member's customers, suppliers, manufacturers, processors, distributors or warehousemen but excluding the premises of any supply undertaking from which the Member obtains electricity, gas or water or telecommunications services.

# SCHEDULE 4 – MONEY EXPENSE

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Qualifying Expense :

1. **Definition**

A Money Expense will include:

- 1.1 Loss of Money the property of the Member or for which the Member is responsible in the course of the Relevant Function:
- (a) in transit
  - (b) in the custody of collectors for twenty-four hours from the time of receipt or until the next working day whichever is the later
  - (c) on sites of contracts whilst any Relevant Person is working thereat
  - (d) on the Premises
  - (e) at the private dwelling houses of any authorised Relevant Persons
  - (f) deposited in bank night safe until removed by a bank official but only up to a Limit Any One Loss as detailed in the Specification at paragraph 5 below.
- 1.2 Loss of or damage to
- (a) the safe(s) and strongroom(s) including replacement of locks;
  - (b) any case, bag, moneybelt or waistcoat used for the carriage of Money following theft or attempted theft therefrom;
  - (c) any stamp franking machine.
- 1.3 Damage to clothing and personal effects belonging to any Relevant Person following robbery or any attempt thereat up to a limit of £1,000 per person.

2. **Scheme Limit of Cover**

This Schedule 4 is subject to a single Limit of Cover which is the Schedule 2 - Property Damage Expense limit as detailed in Rule 7.1 or such inner limits as may be detailed in this Schedule 4.

3. **Condition Precedent**

It is a condition precedent to Scheme cover that:

- 3.1 a complete record shall be kept of the Money;
- 3.2 such record shall be deposited in a secure place other than in the safes containing money;
- 3.3 outside Business Hours the safes be kept locked and the keys of the safes shall not be left on the Premises;
- (Where "*Business Hours*" shall mean the Member's usual office hours and the working hours (including overtime) during which the Member or Relevant Person entrusted with the Money are on the Premises)
- 3.4 in respect of loss or damage by burglary, housebreaking or any attempt thereat that there shall be visible evidence of violent and forcible entry into or exit from the building;
- 3.5 Security Company Contingency Cover

In respect of money in the custody of Security Companies the Scheme shall only be

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liable in the event of the Member being unable to recover the loss from the Security Company. Further

- (a) a written agreement between the Member and the Security Company be made;
- (b) the Member complies with the terms of the above agreement including any limitations regarding amounts.

**4. Exceptions to Schedule 4**

A Money Expense will not include:

- 4.1 Shortages due to clerical or accounting errors;
- 4.2 Loss due to fraud or dishonesty of any Relevant Person not discovered within 30 working days of its occurrence;
- 4.3 Loss of Money from vending or gaming machines or unattended vehicles;
- 4.4 Loss or damage arising elsewhere than in the Territorial Limits.

**5. Specification**

<u>Item</u>	<u>Description</u>	<u>Limit Any One Loss</u>
1.	Stamped national insurance cards, crossed cheques, crossed giro cheques, crossed bankers' drafts, crossed warrants, national savings certificates, premium savings bonds, franking machine impressions, credit company sales vouchers and VAT invoices	£250,000
2.	Money other than described in 1 above not contained in locked safe in the	
	a) Member's Premises outside Business Hours	£2,500
	b) Private dwelling houses of authorised Relevant Persons	£1,000
3.	Money other than described in 1 above in locked safes outside Business Hours	£5,000
4.	Money on the Premises during Business Hours or in a Bank Night Safe	£2,500
5.	Any other loss of money	£2,500

# SCHEDULE 5 – GOODS IN TRANSIT EXPENSE

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Qualifying Expense :

## 1. Definition

A Goods in Transit Expense will include:

### 1.1 Accidental loss, destruction of or Damage to:

- (a) Property in transit up to a limit of £20,000 for any one loss
- (b) the Member's own sheets, ropes, chains, toggles or packing materials on Vehicles, to a limit of £1,000 for any one loss
- (c) Personal Effects of any Relevant Person not otherwise specifically insured whilst in any Vehicle - limit any one driver and any one loss of £1,000

(hereinafter collectively referred to as the "*Property Covered*") whilst in transit on land or water by the conveyance from the time of lifting by any Relevant Person or any sub-contractor of the Member until placed in position by the Relevant Person or sub-contractor at the destination including loading and unloading, within the Territorial Limits.

### 1.2 Costs and expenses necessarily incurred in:

- (a) transferring to any vehicle and/or carrying to original destination or to place of collection the Property Covered necessitated by collision, overturning or impact with any object
- (b) removal of debris and site clearance consequent upon loss of or damage to the Property Covered

up to a limit any one loss of £10,000.

## 2. Scheme Limit of Cover

This Schedule 5 is subject to a single Limit of Cover which is the Schedule 2 - Property Damage Expense limit as detailed in Rule 7.1 or such inner limits as may be detailed in this Schedule 5.

## 3. Exceptions to Schedule 5

A Goods in Transit Expense will not include:

### 3.1 Loss or damage caused by

- (a) depreciation or deterioration or variation in temperature unless caused by accident to the means of conveyance;
- (b) Mechanical and/or electrical derangement of the Property Covered unless caused by external means;
- (c) ordinary leakage, ordinary loss in weight or volume, contamination or ordinary wear and tear of the Property Covered, inherent vice or vermin;
- (d) insufficiency or unsuitability of packing or preparation of the Property Covered;
- (e) wilful misconduct of the Member.

### 3.2 Loss or damage to bullion, cash bank notes, treasury notes, stamps, bonds, securities, furs, jewellery, precious stones, gold and silver articles, clocks, watches, non-ferrous metals, computers, video tapes or cassettes, tape or video records, radio and television sets, record players, tobacco, cigars, cigarettes, wines, spirits or explosives.

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- 3.3 Loss or damage resulting from theft or attempted theft from any unattended Vehicle unless:
- (a) all doors, windows and other points of access have been securely locked and fastened and the keys removed, and unattached trailers have had anti-hitching devices put into operation
- and
- (b) such vehicle is either garaged in a building which is securely closed and locked or parked in a compound secured by locked gates.
- 3.4 Loss or damage of whatsoever nature caused by or arising from inadequate documentation or consequent upon delay in transit and/or indirect or consequential loss of any description.
- 3.5 Any consequence of riot, civil commotion, strikes, lockouts, labour disturbances or confiscation, requisition, destruction or damage by order of any Government or Public or Local Authority.

#### 4. **Schedule 5 Definitions**

For the purpose of this Schedule 5:

- 4.1 "*Property Insured*" means general merchandise other than medical or other equipment connected with the Member, owned by or the responsibility of the Member.
- 4.2 "*Vehicle*" means any vehicle and/or trailer owned or operated by the Member.
- 4.3 "*Personal Effects*" means personal possessions of the Relevant Person excluding cash, bank notes, credit cards, watches and jewellery.
- 4.4 "*Tools*" means tools, tool kits or test equipment owned by or the responsibility of the Member.
5. It is a condition precedent to Scheme cover under this Schedule 5 that:

#### 5.1 **General Condition**

The Member shall only employ steady, reliable and competent drivers and shall take all reasonable precautions

- (a) in securing loads
- (b) to maintain in efficient condition all Vehicles
- (c) to protect the Property Covered from all loss or damage
- (d) to ensure that any vehicle is suitable for the purpose for which it is to be used.

# SCHEDULE 6 – ENGINEERING EXPENSE

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Qualifying Expense :

## 1. Definition

An Engineering Expense is the cost of making good sudden and unforeseen loss or damage including but not limited to Breakdown and Explosion (hereinafter referred to as Damage) to the Property at the Premises which necessitates immediate repair or replacement of the Property before it can resume normal working.

Where “*The Property*” means plant and machinery that is subject to a separate inspection contract that will provide examinations to comply with statutory regulations.

## 2. Limit of Cover

This Schedule 6 is subject to a single Limit of Cover which is the Schedule 2 - Property Damage Expense limit as detailed in Rule 7.1 or such inner limits as may be detailed in this Schedule 6.

## 3. Extensions to Schedule 6

An Engineering Expense will include :

### 3.1 Damage to Own Surrounding Property

Damage to other property belonging to the Member or for which they are responsible or which is in their control or held in trust or on commission by the Member or for which the Member deem themselves responsible

(a) directly resulting from any Damage to the Property

or

(b) caused by the Property though the Property itself may not be damaged.

### 3.2 Reinstatement - Local Authorities

Such additional cost of reinstatement as may be incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any Act of Parliament or with bye-laws of any Municipal or other Authority provided that the amount recoverable under this extension shall not include:

(a) the cost incurred in complying with any of the aforesaid regulations or bye-laws

(i) in respect of destruction or damage occurring prior to the Membership Date;

(ii) under which notice has been served upon the Member prior to the happening of the destruction or damage;

(iii) in respect of undamaged property or undamaged portions of property other than foundations.

(b) the amount of any rate tax duty development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with any of the aforesaid regulations or bye-laws.

### 3.3 Reinstatement

In the event of the Property under this policy being destroyed or damaged the basis upon which the amount payable under this Schedule 6 is to be calculated shall be the reinstatement of the property destroyed or damaged subject to the following special

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provisions and subject also to the terms and conditions of this Schedule 6 except insofar as the same may be varied hereby.

*“Reinstatement”* shall mean the carrying out of the after-mentioned work namely:

- (a) where property is destroyed the re-building of the property if a building or in the case of other property its replacement by condition equal to but not better or more extensive than its condition when new.
- (b)
  - (i) where any item of the Property is lost or destroyed or is damaged to the extent that it cannot be economically repaired replacement by new property of equal performance and/or capacity or if such cannot be reasonably achieved replacement by property having the nearest higher performance and/or capacity to the property lost destroyed or damaged
  - (ii) where the Property is damaged the repair of the damage and the restoration of the damaged portion of the Property to a working condition substantially the same as but not better or more extensive than its condition when new.

#### Special Provisions

- (a) The work of reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Member) will be commenced and carried out with reasonable despatch otherwise no payment beyond the amount which would have been payable under this Schedule 6 if this sub paragraph 3.3 had not been incorporated therein shall be made.
- (b) When any property under this extension is damaged or destroyed in part only the liability of the Member shall not exceed the sum representing the cost which the Member could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (c) No payment beyond the amount which would have been payable under this Schedule 6 if this sub paragraph 3.3 had not been incorporated therein shall be made until the cost of reinstatement shall have been actually incurred.

#### 3.4 Leakage Discharge or Contamination

Loss or damage to the contents of the Property including but not limited to accidental leakage discharge or escape or overflow from the Property or contamination of the contents, including cleaning costs resulting therefrom, up to a limit any one event of £50,000.

#### 3.5 Measures taken in Avoidance of Impending Loss or Damage

Costs incurred by the Member in taking reasonable but exceptional measures to avoid or mitigate impending loss or damage by this Schedule 6 provided that the impending loss or damage does not stem from any reasonably foreseeable cause and that loss or damage would be the outcome to be expected in the absence of such measures.

#### 3.6 Debris Removal

Costs necessarily and reasonably incurred with the consent of the Member in the removal of Property consequent upon damage.

#### 3.7 Temporary Repairs and/or Expediting Costs

Costs necessarily and reasonably incurred in the making of temporary repairs upon and/or the expediting of the repair reinstatement or replacement of the Property consequent upon damage.

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3.8 Consulting Engineers'/Repair Investigation Costs

Costs (including Consulting Engineers' fees) incurred with the consent of the Scheme in conducting investigations and/or tests into possible repair replacement or reinstatement (whether or not successful) of lost or damaged Property.

4. **Exceptions to Schedule 6**

An Engineering Expense will not include:

- 4.1 The cost of remedying or making good wasting wearing away or wearing out of any part of a machine caused by or naturally resulting from ordinary use or working rust or gradual deterioration;
- 4.2 Damage due to execution of repairs;
- 4.3 Compensation in respect of loss of use delay or detention or for consequential loss damage or liability of any nature whatsoever except as specifically provided for herein;
- 4.4 Damage or liability arising out of pressure of chemical action or ignition of the contents of the Property;
- 4.5 Damage arising out of the Property being subjected to tests involving abnormal stresses or arising out of the Property being intentionally overloaded;
- 4.6 Damage or liability arising out of deliberate act omission or neglect of the Member.



# SCHEDULE 7 – FIDELITY GUARANTEE EXPENSE

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Qualifying Expense :

1. **Definition**

A Fidelity Guarantee Expense is an Expense where the Member is indemnified against:

1.1 **Relevant Person Dishonesty**

Direct pecuniary loss or loss of property belonging to the Member or for which are legally responsible arising solely and directly from a deliberate act or acts of fraud or dishonesty committed by any Relevant Person with the clear intention of and which result in improper financial gain for such Relevant Person or for any other person or organisation and which occurs and is discovered during the continuance of the Membership and during uninterrupted service with the Member.

Salary fees commissions and other employee benefits including salary increases and promotions shall not constitute improper financial gain.

1.2 **Third Party Computer and Funds Transfer Fraud**

Theft of money, security or other property by computer fraud, or the theft of any of the Member's funds from the Member's transfer account at a financial institution through fraudulent transfer instructions communicated to such financial institution.

2. **Scheme Limit of Cover**

2.1 This shall not exceed in respect of

- |      |                                       |          |
|------|---------------------------------------|----------|
| (i)  | Any one Claim                         | £250,000 |
| (ii) | All Claims in any one Membership Year | £250,000 |

and shall not be accumulated or increased by reason of this Schedule 7 continuing in force for any subsequent period beyond the first Membership Year.

2.2 Immediately following the discovery of an act of fraud or dishonesty committed by any Relevant Person the Scheme shall not be liable for any losses arising from further acts of fraud or dishonesty by such Relevant Person.

3. **Schedule 7 Definitions**

For the purpose of this Schedule 7:

3.1 *"Any One Claim"* means all acts of fraud or dishonesty committed by any one Relevant Person or by Relevant Persons acting in collusion during the continuance of Membership.

3.2 *"Acting in Collusion"* means all circumstances where two or more Relevant Persons are involved or implicated together or assist each other materially in committing acts of fraud or dishonesty.

3.3 *"Computer Fraud"* means the wrongful conversion of assets under the direct or indirect control of the Member's computer system by means of the direct fraudulent accessing of such computer system by persons other than Relevant Persons and

- (a) the insertion of fraudulent data or instructions into such computer system, or
- (b) fraudulent alteration of data, programs or routines in such computer system.

3.4 *"Financial Institution"* means

- (a) a banking or savings institution, or

- 
- (b) a stockbroker, fund manager or similar investment institution at which the Member maintains a Transfer Account.

3.5 *"Fraudulent Transfer Instructions"* means

- (a) Electronic Instructions being fraudulent electronic, telegraphic, cable, teletype, Tested telex, Tested facsimile or telephone instructions to a financial institution to debit a Transfer Account and to transfer, pay or deliver funds from such account, which instructions purport to have been transmitted by the Member or by a person duly authorised by the Member to issue such instructions but which have been fraudulently transmitted by another, and
- (b) Written Instructions being fraudulent written instructions to a financial institution to debit a Transfer Account and to transfer, pay, or deliver funds for such account through an electronic through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by the Member but which have been fraudulently issued, forged or altered by another.

3.6 *"Securities"* means all negotiable and non-negotiable instruments or contracts representing either money or property and includes revenue and other stamps in current use, tokens and tickets, but does not include Money.

4. **Extension to Schedule 7**

Auditors Fees

This Schedule 7 extends to include the cost of any special professional audit necessarily incurred with the written consent of the Administrator solely to formulate the amount of loss.

5. **Exceptions to Schedule 7**

A Fidelity Guarantee Expense will not include:

- 5.1 Loss of interest on loss of profits or any kind of consequential loss.
- 5.2 Any loss arising elsewhere than in the Territorial Limits.

6. **General Conditions**

6.1 Non-Compliance

Cover under this Schedule 7 is conditional upon there being demonstrable compliance with the relevant standing financial instructions of the Member and all relevant guidance produced by the Department of Health and any Central Government Agencies.

6.2 Observance of Conditions

The due observance and fulfilment of the terms provisions and conditions (General and Claims) of this Schedule 7 by the Member in so far as they relate to anything to be done or complied with by the Member shall be conditions precedent to any liability of the Scheme to make any payment under this Schedule 7.

7. **Claims Conditions**

7.1 Notice of Fraud or Dishonesty and Proof of Claim

- (a) Notice in writing must be given to the Administrator by the Member within fourteen days after discovery of the act of fraud or dishonesty by any Relevant

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Person or any reasonable cause for suspicion thereof or of any circumstances whatsoever which may give rise to a Claim under this Schedule 7.

- (b) Within three months thereafter the Member must supply to the Administrator at his own expense (except as otherwise provided by this Schedule 7) full details in writing of the Claim and all such proof of the correctness of such claim as the Scheme may require.

#### 7.2 Reimbursement

The Member shall give all information and assistance to enable the Administrator to sue for and obtain reimbursement of any monies which the Scheme shall have paid or become liable to pay under this Schedule 7.

#### 7.3 Deduction from Loss

All monies which but for the fraud or dishonesty of the Relevant Person would become payable to him by the Member and any monies recovered from the Relevant Person by the Member shall be deducted from the loss.

#### 7.4 Recoveries

In the event of any loss covered by this Schedule 7 exceeding the Scheme Limit of Cover any recoveries excluding the actual costs of effecting the recovery shall accrue

- (a) firstly to the benefit of the Member to reduce or eliminate the amount of Member's loss
- (b) thereafter to the benefit of the Scheme to the extent of the Claim paid or payable.



# SCHEDULE 8 – CONTRACT WORKS EXPENSE

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## Qualifying Expense :

### 1. Definition

A Contract Works Expense will indemnify the Member only, in respect of loss or damage caused to the Property

- (a) whilst on or adjacent to the site of any Project defined in this Schedule 8
- (b) whilst held for the purposes of the Project at any premises whether belonging to or occupied by the Member or otherwise
- (c) whilst in transit and/or whilst stored in connection therewith anywhere in the Territorial Limits.

### 2. Schedule 8 Definitions

For the purpose of this Schedule 8:

- 2.1 *“Period of Contract”* means as shown in the Contract plus a further 12 months maintenance period thereafter or such further period as specified in the Contract (any extension to the Construction Period required by the Member shall be automatically allowed by the Scheme subject to continued Membership).
- 2.2 *“The Project”* means any permanent or temporary erection construction or installation of buildings or plant carried out by or on behalf of the Member and all associated and ancillary works.
- 2.3 *“The Property”* means all permanent works and materials for incorporation therein (including all designs, drawings, specifications and plans to be provided and work to be done by the contractors under the contract) relating to the design, supply, erection, testing, setting to work and commissioning of the Project together with fitting out works and the Temporary Works. Process plant or equipment or any other property for incorporation into the permanent works which is supplied by or on behalf of the Member whether installed by any contractor or sub-contractor or otherwise.
- 2.4 *“Temporary Works”* means those things erected or constructed for the purpose of making possible the erection or installation of the permanent works and which it is intended shall not pass to the ownership of the Member neither being construction plant nor access equipment.
- 2.5 *“The Contract”* means the Agreements (however made) in connection with the project between the Member and the contractors, consultants and agents and between the contractors, consultants and agents and their sub-contractors and/or sub-consultants and/or sub-agents.
- 2.6 *“The Site”* means the actual place up to which property and materials are to be delivered or where work is to be done in performance of the Contract together with so much of the area surrounding the said place or places as shall be used therefore with the consent of the superintending officer or other authorised representative of the Member.

### 3. Extensions to Schedule 8

A Contract Works Expense will include:

#### 3.1 Professional Fees

The cover in respect of the Property extends to include in addition an amount for architects', surveyors', consulting engineers' or other professional fees of similar nature necessarily incurred in the reinstatement of such property consequent upon its loss or damage but not for preparing any Claim.

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3.2 Re-writing or Re-drawing of Plans or Other Documents

This Schedule 8 is extended to indemnify the Member against the necessarily incurred costs to re-writing or re-creating plans, drawings, calculations or any other contract documents or data lost or damaged wherever such loss or damage shall occur but not for the value of the information contained therein.

3.3 Temporary Buildings and Contents

This Schedule 8 shall include loss of or damage to temporary buildings and contents therein the property of or hired in by the Member but exclude contractors or sub-contractors temporary buildings and contents unless otherwise agreed by the Scheme.

3.4 Excess - 72 Hour Clause

For the purpose of the application of the Scheme Excess it is agreed that any loss or damage to the Property described in this Schedule 8 arising during any one period of seventy-two consecutive hours and caused by storm, tempest, flooding and water shall be deemed to be a single event and therefore to constitute one loss.

3.5 Debris Removal

Costs and expenses necessarily incurred by the Member in:

- (a) removal of disposal of debris foreign to the Project;
- (b) dismantling and/or demolishing of any part of the Property, including temporary storage of dismantled or demolished property;
- (c) shoring up, propping and/or protecting Property whether damaged or not;
- (d) the cost of repairing or clearing drains, sewers, service mains and the like and/or dewatering;

in any circumstances giving rise to a Claim under this Schedule 8.

3.6 Maintenance or Defects Liability Period

- (a) The indemnity by this Schedule 8 shall continue in full force until the issue of the last Certificate of Completion in respect of any contract or sub-contract or supply order forming part of the Project.
- (b) In addition, the indemnity by this Schedule 8 shall continue for a further period after issue of the said Certificate but solely in respect of loss of or damage to the Property as a result of
  - (i) a cause occurring prior to the issue of the said Certificate;
  - (ii) any operations carried out by the contractor or sub-contractor of the Member for the purpose of complying with the conditions (written or implied) under the conditions governing the execution of their contracts or sub-contracts;
  - (iii) any testing or commissioning operations carried out by or on behalf of the Member.
- (c) Where any Property is replaced or renewed during any maintenance, guarantee or defects liability period, this Schedule 8 shall apply to the property substituted for the maintenance, guarantee or defects liability period which would have originally attached.

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3.7 Liability for Damage to Hired-in-Plant & Continuing Hire Charges

All sums which the Member shall become legally liable to pay under the terms of hiring agreement or otherwise in respect of

- (a) loss of or damage to plant hired by the Member anywhere in the Territorial Limits
- (b) continuing hire charges incurred in consequence of loss or damage to plant indemnifiable under (a) above

Provided always that the terms upon which the Member hires the plant are no more onerous than the standard form of contract of the Contractors' Plant Association (CPA) or Hire Association of Europe.

4. **Exceptions to Schedule 8**

A Contract Works Expense will not include:

4.1 loss of or damage to any part of the permanent works:

- (a) after such part has been completed and delivered up to the owner tenant or occupier
- or
- (b) after such part has been taken into use by the owner tenant or occupier
- or
- (c) for which a certificate of completion has been issued

other than where loss or damage (not otherwise excluded by this Schedule 8) is the responsibility of the contractor under the terms of any maintenance period or defects liability period clause incorporated in any standard printed form of contract conditions.

4.2 loss or damage to:

- (a) property forming or which has formed part of any structure prior to the commencement of the Project;
- (b) deed bonds bills of exchange promissory notes cash bank notes cheques securities for money or stamps;
- (c) except as provided by sub paragraph 3.7, any construction plant whatsoever;
- (d) construction plant due to its own breakdown or its own explosion but this exception shall not apply to loss of or damage to other Property;
- (e) any vessel or craft made or intended to float on or in or travel on or through water or air.

4.3 the costs necessary to:

- (a) replace, repair or rectify any of the Property which is in a defective condition due to a defect in design, plan, specification, materials or workmanship, but this exception shall not apply to the remainder of the Property which is free of such defective condition but is damaged as a consequence of such defect;
- (b) rectify or make good any wear and tear, wasting, wearing away or wearing out gradual deterioration, rust, oxidation, corrosion or erosion but this exception

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shall not apply to loss or damage which is resultant upon such wear and tear, wasting, wearing away or wearing out, gradual deterioration, rust oxidation, corrosion or erosion.

- 4.4 confiscation nationalisation or requisition or destruction by or under the order of any government or public or local authority.
- 4.5 loss of property by disappearance or shortage which is only revealed when an inventory is made or is not traceable to an event.
- 4.6 penalties under contract for delay or non-completion or consequential loss or damage of any kind or description.

# THE LIABILITIES TO THIRD PARTIES SCHEME



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# SCHEME CONTACTS

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Please refer any questions in relation to Scheme membership, cover or contributions to the following:

Willis Corroon Limited  
Howard House  
Queens Avenue  
Bristol  
BS8 1SN

Telephone : 0845 6010193

Facsimile : 0117 976 9322

Any questions relating to the handling of claims under the Scheme should be referred to:

The NHS Litigation Authority  
5 Pemberton Row  
London EC4A 3BA

Telephone : 0171 842 0611

Facsimile : 0171 842 0620

# MEMBERSHIP RULES

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1. General Description      The Liabilities to Third Parties Scheme was established by the Regulations (as defined below) made pursuant to Section 21 of the National Health Service and Community Care Act 1990.

The Scheme is to be administered on behalf of the Secretary of State by the Administrator which may, in turn, contract with Scheme Managers to operate some of the day to day procedures of the Scheme.

Members shall be expected to have full knowledge of the Rules and by applying to become Members they are deemed to agree to be bound by them. Subject to the approval of the Secretary of State, these Rules may be amended from time to time by the Administrator.

These Rules and the Schedules hereto constitute the exercise by the Secretary of State of the power of determination afforded him at Regulation (as defined below) 9(2)(e).

2. Definitions and Interpretation

2.1 Definitions

In these Rules, unless the context otherwise requires, the following expressions shall have the following meanings:

*“Administrator”* means NHSLA or whosoever is appointed from time to time by the Secretary of State to administer the Scheme;

*“Adverse Incident”* means any event resulting in a claim;

*“Applicant”* shall have the meaning ascribed to it in Regulation 6(7);

*“Application”* shall have the meaning ascribed to it in Regulation 6(7);

*“Board”* means the board of the Administrator from time to time ;

*“Board Member”* means, in respect of a Member, any member of the board of that Member whether or not that person is an employee of that Member;

*“Bodily Injury”* includes death, illness, disease or nervous shock;

*“Claim”* means any demand, however made, against a Member for monetary compensation in respect of a Qualifying Liability;

*“Claimant’s Costs”* means where an award of damages has been made against a Member by a court or other tribunal, the amount of the legal and associated costs awarded to the claimant or where legal proceedings have been compromised by the Member or settled, the Member’s contribution towards any legal and associated costs of the claimant;

*“Claims Paid”* means the basis on which benefits may be made available to Members as stated in Rule 6.4;

*“Compensation”* means the amount awarded by a Court of Law in respect of damages (and where awarded, provisional damages but excluding exemplary, punitive or aggravated damages or damages which are liquidated under contract) including interest thereon;

*“Contribution”* means the amount which a Member must pay into the Scheme to be eligible for benefits under the Scheme;

*“Costs and Expenses”* means:

- (a) Claimant’s Costs; or

(subject in all cases to the Administrator’s consent thereto having been obtained by the Member):

- (b) Defence Costs;

- 
- (c) all solicitors fees for legal representation at:
- (i) any Coroners Inquest or Fatal Accident Inquiry
  - (ii) proceedings in any Court of Summary Jurisdiction arisen out of any alleged breach of statutory duty
  - (iii) any internal enquiry

in connection with any event which is or may be the subject of a claim under this Scheme;

*"Date of Settlement"* means the date on which Settlement of all aspects of the Claim occurs;

*"Defence Costs"* means reasonable and necessary legal fees and disbursements (as approved by the Administrator in writing) including expert witness fees incurred with respect to the investigation, defence, Settlement or appeal of a Claim;

*"Directors' and Officers' Liability Claim"* means a claim arising from a liability of a type detailed at Schedule 4 hereto;

*"Eligible Body"* means a body of the kind described in Regulation 3;

*"Employers' Liability Claim"* means a claim arising from a liability of a type detailed at Schedule 2 hereto;

*"Excess"* means the amount, including Defence Costs and Claimant's Costs, which must be paid by a Member itself in respect of each and every Claim;

*"Financial Loss Claim"* means a claim of the kind described in paragraph 4 of Schedule 3 hereto;

*"General Exceptions"* means an exception detailed at Schedule 1 hereto;

*"IBNR Benefit"* means a benefit which may be payable in respect of an IBNR Liability in accordance with Rule 6.5;

*"IBNR Claim"* is a Claim which arises from an IBNR Liability;

*"IBNR Liability"* means a liability of a Member which has arisen from an incident that occurred before the Membership Date and which was not known as a Claim at the Membership Date;

*"Income Generation"* means any activity carried out by an Eligible Body as a result of any direction made by the Secretary of State under the powers afforded him by Section 7 of the Health and Medicines Act 1988;

*"LTPS Claim"* means any Claim which, in the Administrator's opinion, is likely to be eligible for funding under the Scheme and/or has Significant Implications and/or may set a legal precedent or is a test case of a Serial Claim;

*"Member"* means an Eligible Body which is a Member of the Scheme;

*"Member's Payment"* means the sums payable by a Member in respect of any LTPS Claim as referred to in Rules 7.1 and 9.3;

*"Membership"* means the state of being a Member;

*"Membership Date"* means the date on which Membership commences in accordance with Regulations 6.1 or 6.2 and 6.6;

*"Membership Year"* means, in relation to an Eligible Body, any period of 12 months beginning on 1st April during any part of which that Eligible Body is a member of the Scheme;

*"NHS LA"* means the Special Health Authority established pursuant to the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 by the Secretary of State under

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the title National Health Service Litigation Authority, to administer the Scheme and shall include where appropriate the Board and any committee or sub-committee of the Board and the officers of NHSLA;

*“Personal Accident Claim”* means a claim arising from liability detailed at Schedule 6 hereto;

*“Personal Injury”* means Bodily Injury and wrongful arrest, detention, imprisonment and malicious prosecution;

*“Persons”* includes companies, statutory bodies, partnerships, firms, individuals, government departments and other administrative organisations and any other body of persons, whether incorporated or unincorporated;

*“Pollution Liability Claim”* means a claim of the kind described at sub paragraph 3.9 of Schedule 3 hereto;

*“Premises”* means all premises owned, occupied or used by the Member in the United Kingdom;

*“Products Supplied”* means goods including labels and containers and packaging

- (a) on which work has been completed by or on behalf of the Member at the Member's normal place of business or that of the party who carried out the work on the behalf of the Member; or
- (b) which has been handled, stored, sold, supplied, transported or financed by the Member and which at the time of the event giving rise to a Claim are not under the custody or control of the Member or any Relevant Person;

*“Professional Indemnity Claim”* means a claim arising from a liability of a type detailed at Schedule 5 hereto;

*“Property”* means material property;

*“Public and Products Liability Claim”* means a claim arising from a liability of a type detailed at Schedule 3 hereto;

*“Qualifying Liability”* means a liability of the kind described in Rule 3;

*“Regulations”* mean the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999 (S.I 1999 No. 873);

*“Relevant Function”* means the function of providing services in England for the purposes of the National Health Service Act 1977 or by virtue of section 7 of the Health and Medicines Act 1988 or under paragraph 14 or 15 of Schedule 2 to the National Health Service and Community Care Act 1990;

*“Relevant Person”* means, in respect of a Member, a person employed or engaged by that Member, and shall be taken to include:

- (a) a person under a contract of service or apprenticeship with the Member
- (b) a labour master or person supplied by a labour master
- (c) a person employed by labour only sub-contractors
- (d) a person hired to or borrowed by the Member including volunteer drivers in connection with community bus schemes
- (e) person being a prospective driver whilst driving
- (f) person undertaking study or work experience
- (g) person supplied under any youth training or similar government scheme while working for the Member in connection with the Relevant Function
- (h) director or trustee
- (i) authorised voluntary worker
- (j) committee members or review panel members

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*“Risk Management”* means the management of risk with a view to minimising both the occurrence of Adverse Incidents and of Claims and the amount of financial liability arising therefrom;

*“Rules”* means the Rules herein set out as varied from time to time in accordance with Rule 1;

*“Run Off Benefit”* means, subject to the Administrator’s absolute discretion, an entitlement to a benefit which may be purchased by former Members in respect of Claims reported during the period of Membership but which are not settled within 30 days of the termination of their Membership;

*“Scheme”* means the Liabilities to Third Parties Scheme;

*“Scheme Managers”* means Willis Corroon Limited and/or whomsoever is appointed by the Administrator from time to time in relation to all or any part of the Scheme;

*“Secretary of State”* means the Secretary of State for Health;

*“Serial Claim”* means a series of Claims which in the opinion of the Administrator, arise from common causes and which have a common identity or nature;

*“Settlement”* means the amount of damages agreed pursuant to a legally binding agreement between a claimant and a Member in respect of a Claim (whether with or without admission of liability) or the amount of damages awarded in respect of a Claim pursuant to an order of a court or other tribunal, whether the payment of such damages will be made by a single payment or is a Structured Settlement and “settled” shall be construed accordingly;

*“Significant Implications”* means, in relation to a Claim, any Claim which is novel, contentious or repercussive;

*“Structured Settlement”* means any Settlement in respect of a Claim whereby the whole or part of the damages is expressed to be paid at future dates whether absolutely or conditionally;

*“Territorial Limits”* are:

- (a) anywhere within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man including designated areas of the continental shelf surrounding Great Britain and foreign sections of cross boundary petroleum fields as defined in the Employment (Continental Shelf) Act 1978.
- (b) elsewhere in the world in connection with the activities of any Relevant Person provided such Relevant Person is normally resident in Great Britain, Northern Ireland, the Channel Islands or the Isle of Man and is not outside such countries for more than six months in any one Membership Year.
- (c) anywhere in the world in connection with the Products Supplied at or from the Premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

*“Total Payment”* means the total payment calculated in accordance with Rule 7;

*“Year”* means the period from 1 April in any calendar year through until 31 March the following calendar year.

## 2.2 Interpretation

All terms defined in the Regulations which are used in these Rules shall bear the same meaning as in the Regulations unless the context requires otherwise and in the event of any conflict or inconsistency between the Regulations and the Rules, the Regulations shall prevail.

In these Rules, a reference to a numbered rule is a reference to the Rule which bears that number

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in these Rules and a reference to a numbered regulation is a reference to a regulation which bears that number in the Regulations.

Clause headings and the index are for ease of reference only and are not to affect the interpretation of these Rules.

Words denoting the singular include the plural and vice-versa.

### 3. Coverage of the Scheme

Subject to the terms of the Regulations (as amended or varied from time to time), the liabilities to which the Scheme applies are any liabilities to which a member is subject in respect of loss, damage or injury which

- (a) arises out of the carrying out of any Relevant Function of that Member;
- (b) is a qualifying liability; and
- (c) is not a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended) the National Health Service (Existing Liabilities Scheme) Regulations 1996 (as amended) or a qualifying expense for the purposes of the National Health Service (Property Expenses Scheme) Regulations 1999.

*“Qualifying Liability”* means, in respect of a member, a liability which falls within the definition thereof at Regulation 4 (2), and which is either an Employers’ Liability Claim, a Public and Products Liability Claim, a Directors’ and Officers’ Liability Claim, a Professional Indemnity Claim or a Personal Accident Claim, save where in each case a General Exception applies.

### 4. Membership of the Scheme

#### 4.1 Eligibility for Membership

A body is eligible to participate in the Scheme if it is a body of the kind described in Regulation 3. The Administrator shall, having regard to the information provided by the Applicant, and to such other factors regarded by the Administrator as material, determine whether or not an Applicant should be admitted as a Member.

#### 4.2 Application Forms

The Administrator shall have the power to prescribe a form or forms of application to be delivered to the Administrator by Applicants and to require certain information on the Applicant’s activity profile in accordance with Regulation 6(4). All Applications shall be made in accordance with Regulation 6(3).

#### 4.3 Date of Commencement of Membership

Membership shall commence in accordance with the provisions of Regulations 6(1), 6(2) and 6(6).

#### 4.4 Period of Membership

A Member may only terminate its participation in the Scheme in accordance with the provisions of Regulations 7(1).

### 5. Provision of Information

#### 5.1 General

Members will be required to provide (at their own expense) such information to the Administrator and/or the Scheme Managers on their activities as may be determined from time to time by the Administrator which information shall include, without limitation, the information referred to in these Rules and in Regulations 6(4) and 10. Members acknowledge and agree that any and all

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information and data (howsoever held) provided by them to the Scheme Managers may be disclosed without restriction or conditions by the Scheme Managers or either of them to the Administrator, the Secretary of State and their respective officers, agents, employees and sub-contractors. For the avoidance of doubt, any such information provided by Members shall be and remain the property of the Administrator.

#### Cover Voidable

Cover for a Member under the Scheme shall be voidable (in whole or in part) at the Administrator's discretion in the event of misrepresentation, mis-description or non-disclosure in any material fact.

A material fact is any fact which might influence the Administrator in deciding whether or not to grant cover under the Scheme, what the terms should be or what contribution to charge.

#### Alteration

Cover under the Scheme shall be avoided with respect to any part thereof in regard to which there is any alteration after the commencement of Membership:

- (a) by removal;
- (b) whereby the risk of loss, destruction, damage, accident or injury is increased;
- (c) where the interest of the Member ceases except by will or operation of law

unless admitted by the Administrator.

#### Fraud

If any claim made by the Member or anyone acting on behalf of the Member to obtain any Scheme Benefit shall be fraudulent or intentionally exaggerated or if any false declaration or statement shall be made in support thereof no compensation shall be payable hereunder.

### 5.2 Information Contained in Application Forms

If there is any material change in the details and information contained in the application form, Members are required to notify the Administrator immediately and the Administrator reserves the right, in its absolute discretion, to amend the amount of the contributions from Members and/or withhold any benefits which the Administrator might otherwise have provided.

### 5.3 Confidentiality of Statistical Data

The Administrator and the Scheme Managers shall ask Members to provide certain statistical information that will enable it to develop the contribution setting process and to identify trends in litigation. Whilst this information will be disseminated on a regular anonymous basis to all Members to assist in their Risk Management processes, statistical information on individual Members will only be available to that Member, the Administrator and the Scheme Managers, and the Administrator shall use all reasonable endeavours not to disclose such information to third parties without the prior written consent of that Member or unless such information is required to be disclosed by law or any regulatory requirement or by any regulatory authority.

### 5.4 Claim Reports

Members will be required to meet the reporting frequency and information requirements as defined and published from time to time by the Administrator.<sup>1</sup>

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<sup>1</sup> In general, it is intended that no significant extra burden will be placed on Members and that the information collected should be no more than that which a Member conforming to good practice would have readily available.

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## 6. Benefits Provided by the Scheme

### 6.1 Discretion of the Administrator

All benefits available to Members under the Scheme shall be given in the sole and absolute discretion of the Administrator on behalf of the Secretary of State whose decision in these matters shall be final and binding. These Rules shall not, under any circumstances, be construed to imply that any contract of insurance exists between the Member and the Administrator or that the benefits available under the Scheme are not discretionary. Subject to the total funds available to the Scheme and to the discretion of the Administrator, there shall be no limit to the financial benefits available under the Scheme in any Year.

### 6.2 Benefits

The Administrator may, subject to Rule 6.1, provide funds to make payments permitted under Regulation 9 in a sum not exceeding a Total Payment in respect of any LTPS Claim.

### 6.3 Limit to Benefits

The Administrator may refuse to provide financial benefits to any Member in accordance with the provisions of Regulation 9(2). In the event that the Administrator refuses to provide benefits in these circumstances, the Member shall have the right of appeal to the Secretary of State within 30 days of the decision of the Administrator for a review of the Administrator's decision, but in all circumstances the decision of the Secretary of State shall be final and binding.

### 6.4 Claims Paid Basis

Subject to Rule 6.1, benefits will be provided under the Scheme on a claims paid basis. This means that in order to receive benefits in respect of a Claim, the Member must have maintained continuous Membership between the following dates (inclusive):

- (a) the date of occurrence of the Adverse Incident which subsequently gives rise to the Claim; and
- (b) the date of Settlement unless the Member is eligible for the IBNR Benefit and/or Run Off Benefit in which case the conditions specified in Rules 6.5 and 6.6 shall apply.

### 6.5 Incurred But Not Reported (IBNR) Benefit

Benefits in respect of an IBNR Claim may be available subject to additional contributions and in the absolute discretion of the Administrator. This IBNR Benefit may be available in respect of an Employers' Liability Claim, a Public and Products Liability Claim and a Professional Indemnity Claim in cases where Members have previously held "claims made" insurance policies.

The Scheme will cover the Member against an Employers' Liability Claim, a Public and Products Liability Claim and a Professional Indemnity Claim which happened or was caused prior to the Member's becoming a Member of the Scheme and in respect of which a claim is first made in writing against the Member during a Membership Year and on or after the Membership Date, and for which alternative insurance is not available.

### 6.6 Run Off Benefit for Former Members

If a Member ceases for any reason to be a Member, no benefits shall be available to that former Member for Claims reported during the period of Membership but which are not settled within 30 days of the date of termination of the Membership unless a Run Off Benefit is purchased by the former Member. This benefit may be made available to a former Member under such terms and conditions as the Administrator may, in its absolute discretion, determine at the date the Member ceases to be a Member.

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#### 6.7 Contribution with Insurance Policies

If at the time of the happening of any loss, destruction or damage or liability covered by this Scheme there shall be in existence any insurance of any nature providing indemnity to the Member for such loss, destruction or damage or liability whether effected by the Member or not then the liability of the Scheme shall be limited to a contribution not exceeding that of the insurer or insurers.

#### 6.8 Rights of the Administrator

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Scheme the Administrator and every person authorised by the Administrator may without thereby incurring any liability and without diminishing the right of the Administrator to rely upon any conditions of this Scheme, enter, take or keep possession of the building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to them any of the property and may keep possession of an deal with such property for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the Member to the Administrator so to do. If the Member or anyone acting on behalf of the Member shall not comply with the requirements of the Administrator or shall hinder or obstruct the Administrator in doing any of the above-mentioned acts then all benefits under this Scheme shall be forfeited. The Member shall not in any case be entitled to abandon any property to the Administrator whether taken possession of by the Administrator or not.

#### 6.9 Subrogation

Any Member under this Scheme shall at the request and expense of the Administrator do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Administrator for the purpose of enforcing any rights and remedies of or of obtaining relief or indemnity from any other parties to which the Administrator shall be or would become entitled or subrogated upon its paying for or making good any loss, destruction or damage, accident or injury under this Scheme whether such acts and things shall be or become necessary or required before or after indemnification by the Administrator. In no event should any Member waive such rights of subrogation against other parties, unless by specific agreement with the Administrator.

#### 6.10 Statutory Requirements, Maintenance and Reasonable Precautions

The Member shall:

6.10.1 maintain the Premises, medical and all other machinery, plant and equipment in a satisfactory state of repair;

6.10.2 take all reasonable precautions for the safety of the property;

6.10.3 take all reasonable precautions to prevent loss, destruction, damage, accident or injury.

### 7. Excess Levels

#### 7.1 Excess Levels Year on Year

The Scheme will not be liable for the amount of the Member's Excess (or any lesser amount for which a claim may be settled) shown below in respect of each and every event resulting in a claim.

Employers' Liability Claim	£10,000
Public & Products Liability Claim (excluding Pollution Liability Claims and Financial Loss Claims)	£3,000

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Pollution Liability Claim	£10,000
Financial Loss Claim	£3,000
Directors' & Officers' Liability Claim	Nil
Professional Indemnity Claim	£3,000
Personal Accident Claim	Nil

The Excess applicable to a Claim will be the higher of the Excess applicable in the Membership Year the Claim is notified to the Member and the Excess applicable in the Membership Year in which the Claim is settled.

The Administrator may change the Excesses such changes to be notified to Members not later than 31 October in any Year to become effective from 1 April the following Year.

The Administrator shall have full discretion to determining any Excess level issues arising from a multi-party situation.

## 8. Contributions

### 8.1 Contribution Assessment

The Administrator shall determine the contribution to be paid by Members having regard to the matters referred to in Regulation 8(2). The Administrator may, in the light of differing and/or special needs of an individual Member or group of Members, create different categories of Member (as defined by the Administrator). The Administrator may then, in its absolute discretion, determine different rates or different periods of contribution such determination to be final and binding on the Members.

### 8.2 Anniversary Assessments

The amount of Members' contributions will be notified to them in accordance with Regulation 8(3).

### 8.3 Payment Terms

Members' contributions under the Scheme will be paid through the Paymaster Accounts ("PGO") of the Administrator and the Member in accordance with Regulation 8(6). Subject to the provisions of Regulation 8(6), Members shall be offered contribution payment terms on an annual basis in advance or such other basis as the Administrator may determine from time to time and contributions shall be made by transfer from each Member's PGO to the Administrator's PGO.

### 8.4 Risk Management Discounts

The Administrator shall develop Risk Management standards which, if achieved by Members, may qualify Members for contribution discounts. The standards and the rating system shall be published and distributed to all Members. Any discount for which Members qualify will be netted off the following Year's contribution (if the Member is to remain a Member for the following Year), or by way of a credit made to the Member's PGO, such method of payment to be at the Administrator's discretion.

The Administrator shall determine and publish the structure of the discounts for future years in due course.

In the event of a dispute between the Administrator and the Member over the rating attributed to that Member's Risk Management processes and, if any, the resulting Contribution discount, the Member shall have the right of appeal to the Board.

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#### 8.5 Excess Funds

If, in the view of the Administrator, excess funds have been collected in the previous Year, such funds (or a proportion of those funds) shall be used to offset the Contributions to be paid by Members in a following Year.<sup>2</sup> No monies shall be returned to Members or former Members.

#### 8.6 Non Payment of Contributions

The provisions of Regulation 7(3) will apply where any payment which a Member is liable to pay is in arrears.

### 9. Claims Management

#### 9.1 Claims Reporting Procedures

Forthwith upon notification to a Member of any Claim which appears likely to be a LTPS Claim the Member shall notify the Administrator and supply all appropriate documentation to enable the Administrator to determine, in its absolute discretion, whether or not the Claim is likely to be a LTPS Claim. If the Claim is, in the Administrator's opinion, unlikely to be a LTPS Claim then the Member shall be responsible for handling the same subject to any protocol or guideline issued from time to time by the Administrator. If the Claim is, in the Administrator's opinion, likely to be a LTPS Claim then the Administrator shall, unless it determines otherwise in its absolute discretion in respect of any Claim or Claims, conduct the Claim as referred to in Rule 9.2.

From time to time, the Administrator shall publish protocols and guidelines for the manner of reporting Claims each of which shall be incorporated in and form part of these Rules. The nature of the information required may vary according to the expected value of the Claim and the Excess chosen by the Member.

#### 9.2 LTPS Claims

Members shall co-operate with the Administrator and shall provide to the Administrator all such assistance and information which it may require in respect of the conduct of any Claim. Without prejudice to the foregoing, the Administrator shall have the right, on behalf of the Member, to exercise any right which arises whether by virtue of a contract or otherwise in connection with a Qualifying Liability, including in particular, the right to select, instruct and de-instruct legal and other advisers and agree the terms of their retainer, and any right to raise claims or defences, and/or to bring proceedings. Such rights apply in respect of all LTPS Claims notified at any time and from time to time to the Administrator. In addition, and at no charge, the Member shall give the Administrator full access to all documents, records, computer databases or other property, to premises and to Relevant Persons.

#### 9.3 Payment in respect of LTPS Claims

The Administrator shall keep records regarding the costs of individual LTPS Claims which can be taken into account when determining the contribution payable by the Member towards the Settlement, Claimant's Costs and Defence Costs and any other costs or payments in respect of the LTPS Claim and the amount of the Total Payment in respect of such LTPS Claim.

Payment in respect of a Qualifying Liability shall unless the Administrator otherwise directs be made by the Member forthwith to whomsoever the Administrator shall direct on notification by the Administrator to make the payment and the Member shall receive reimbursement in respect of such payment net of the Member's contribution towards the amount of such payment as determined by the Administrator in its absolute discretion but including, without limitation, the amount referred to as payable by the Member under Rule 7.1 .

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<sup>2</sup> i.e. Excess funds from Year 1 will be credited no earlier than Year 3. This is to allow Year 1 accounts to be audited. Members will be notified of the amount capable of being offset with the contribution assessment for Year 3.

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In determining the Member's Payment, the Administrator shall take into account whether the Member has complied with the Regulations and the Rules and in particular, but without limitation, Rule 9.2. Where more than one Member is liable in respect of a LTPS Claim the Administrator shall apportion the amount of such contribution in whatever manner it may decide. The Administrator shall also take account of sums paid as specified under Rule 9.5.

If the Administrator so decides in its absolute discretion in respect of any Claim or Claims, any payment in respect of a Qualifying Liability shall be made direct to third parties as aforesaid by the Administrator, the Member shall make the Member's Payment to the Administrator or as it shall direct forthwith upon notification by the Administrator.

#### 9.4 Claims Settled Below the Excess

Claims (including Claimant's Costs and Defence Costs) settled below the amount of the Excess are a matter for the Member, subject only to the reporting requirements published by the Administrator from time to time.

#### 9.5 Legal Advice

As referred to in Rule 9.2, the Administrator shall appoint on its own behalf and on behalf of any Member legal and other advisors selected by the Administrator either generally to act in respect of LTPS Claims or in relation to particular LTPS Claims or categories of LTPS Claims.

In the event that the Administrator shall appoint any legal advisor as referred to above then the Administrator shall be entitled to pay such legal advisor on whatever terms it considers appropriate and to allocate and apportion the amount of any sums so paid between such LTPS Members as it considers appropriate. Such sums so allocated will be taken into account in determining the Member's Payment under Rule 9.3.

#### 9.6 Claims Management Dispute Procedure

If there is a dispute on the handling of a Claim between the Member and the Administrator then subject in all cases to the overriding discretion of the Administrator, the benefits available to that Member may be affected, as follows:

- (a) where the Member wishes to settle but the Administrator recommends defending, no benefits will be available;
- (b) where the Member wishes to defend but the Administrator recommends that the Claim is settled by agreement:
  - (i) the benefits available will be no more than those accruing from the amount recommended by the Administrator to be offered to settle the Claim; and
  - (ii) should the Member continue to pursue the defence of the Claim and succeed the Member will be eligible for reimbursement of the unrecovered Defence Costs up to the value of, but not exceeding those benefits available under Rule 9.6 (b)(i).

#### 9.7 Claims Management Appeals Procedure

In the event that a Member disagrees with the view of an employee, agent or sub-contractor of the Administrator in the management of a Claim, the Member shall have the right of appeal to the Board which shall review the Claim under dispute and provide a ruling.

#### 9.8 Structured Settlements

Where a Claim has or is due to settle, Members and the Administrator should consider the overall

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value for money (VFM) to the public sector (in accordance with NHSE Guidance from time to time) in proposing a Structured Settlement. The use of a Structured Settlement shall, however, be subject to the final approval of NHSLA and or NHSE (as appropriate).

#### 9.9 Mitigation

Members agree to do all things reasonably in their power to eliminate or mitigate any cost, expense or liability in respect of any Claim. In particular, any monies recovered from any other source in respect of a Claim shall be set off against any benefits available under the Scheme, unless agreed otherwise by the Administrator beforehand.

### 10. Funding

The Administrator shall establish funding (consistent with a claims paid funding method) for those Claims that the Administrator believes will be settled within the forthcoming Year. The Administrator shall establish a fluctuation reserve, the purpose of which will be to smooth, on a Year on Year basis, the Contribution payable by Members and to protect the Scheme against an unforeseen run of payments. The size of the fluctuation reserve shall be determined by the Administrator but subject always to any limitations placed upon it by HM Treasury.

### 11. Set-Off and Insolvency

#### 11.1 Set-Off

The Administrator may set off any amount due from a Member or former Member against any amount due to or agreed to be paid to such Member or former Member.

#### 11.2 Insolvency of a Member

In the event of the winding up of a Member or the taking of other analogous insolvency proceedings in relation to a Member:

- (a) no further benefits will be available to that Member; and
- (b) its Membership shall terminate forthwith.

### 12. Expulsion from Membership

#### 12.1 Right of Expulsion

Without prejudice to Regulation 7(3), upon giving not less than 28 days' notice to the Member, the Administrator shall have the right to expel any Member from Membership for a gross breach of the Rules or Regulations or whose conduct or continued Membership is, in the opinion of the Administrator, detrimental to the efficient administration of the Scheme or to the interests of the other Members. Such expulsion shall not affect any outstanding obligations of the Member to the Scheme. The date of termination of Membership shall be the date on which the notice expires (date of exit) but during the period of such notice the Member shall not be entitled to any benefits under the Scheme.

#### 12.2 Right of Appeal against Expulsion

A Member under notice of expulsion shall have the right to appeal to the Board within 30 days of such notice and thereafter to the Secretary of State within 30 days of the decision of the Board, against the decision to expel the Member. In all circumstances, the decision of the Secretary of State shall be final and binding.

#### 12.3 Outstanding Claims

In the event of the expulsion of a Member under Rule 12.1, for the avoidance of any doubt, no financial liability shall rest with the Administrator for outstanding Claims which have not been settled or potential Claims made against the Member, whether notified to the Administrator or

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not, or any unexpired Contributions to the Scheme unless the Administrator determines otherwise.

13. Guidance on Specific Issues

The Administrator shall, from time to time, publish guidance on specific issues concerning the qualification for and the extent of benefits available under the Scheme.

14. General

14.1 Notices

A notice to be served on the Administrator may be served by sending the notice by recorded delivery addressed to the Administrator at 5 Pemberton Row, London EC4A 3BA, or by personal delivery to that address.

A notice to be served on a Member may be served by sending the notice by recorded delivery addressed to the Member at the address last notified to the Administrator or by personal delivery to that address.

Any such notice shall be deemed to have been served, if sent by post, on the day after it was posted or if delivered personally, on the date of delivery.

14.2 Non Disclosure and Misrepresentation

The Administrator shall be entitled to withdraw all benefits in the event of non disclosure of information or misrepresentation by a Member at any time unless the Member is able to establish to the satisfaction of the Administrator that such non disclosure or misrepresentation was free from any fraudulent conduct or intent to deceive. In such circumstances, the Contribution payable by the Member and the Excess applicable to that Member may be adjusted in the absolute discretion of the Administrator to those which would have applied had such circumstances been disclosed.

14.3 Liaison and Co-operation

Members shall fully co-operate and liaise with the Administrator and the Scheme Managers and take such steps as the Administrator and/or the Scheme Managers may request in connection with, inter alia, the administration of the Scheme including, without limitation, by responding promptly to any requests for information.

15. Governing Law

These Rules shall be governed by and construed in accordance with English Law.



# SCHEDULE 1

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## General Exceptions to Qualifying Liabilities

Any Claim brought by a Member shall not be a Qualifying Liability for the purposes of the Scheme to the extent that such claim arises from:

1. death or disablement, loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature 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;
  - (c) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
  - (d) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds;
  - (e) (for the purposes of a Public and Products Liability Claim only) the Member's activities while in or on that part of any commercial or military airport or airfield provided for
    - (i) the take-off or landing of aircraft or the movement of aircraft on the ground
    - (ii) aircraft parking including any associated service roads refuelling areas ground equipment parking areas aprons maintenance areas and hangars;
  - (f) an incident which occurred prior to the Member acquiring shadow Trust or full Trust status (save in any circumstance where a Member has taken over any Qualifying Liabilities of a Trust which was previously a Member);

provided that the general exceptions at sub paragraphs 1(a), 1(b), 1(c) and 1(d) shall not apply to an Employers' Liability Claim.

2. any liability to which a Member is subject in respect of bodily injury which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 or the National Health Service (Existing Liabilities Scheme) Regulations 1996;
3. Income Generation activities which are advised from time to time by the Administrator to the Member as being excluded. This exception does not apply to an Employers' Liability Claim or a Directors' and Officers' Liability Claim.

Members are required to make full declarations of Income Generation activities to the Administrator. Activities which have not been declared will be excluded until such time as they have been declared by the Member and a decision on Scheme cover made by the Administrator. Any failure to declare any such Income Generation activity (including, notwithstanding paragraph 3 above, in the event of an Employers' Liability Claim or a Directors' and Officers' Liability Claim) shall (in the Administrator's discretion) render the Cover for the Member concerned voidable in whole or in part;

4. liability arising from failure of plant and equipment or other related costs as a result of the Year 2000 date recognition problem unless the Member can provide written evidence of compliance with any manufacturers' recommendations, and demonstrate to the satisfaction of the Administrator that action has been taken to comply with all relevant guidance produced by the Department of Health and any Central Government Agencies.



# SCHEDULE 2 – EMPLOYERS’ LIABILITY SCHEME

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## Qualifying Liability :

### 1. Definition

In the event of Bodily Injury sustained by any Relevant Person arising out of and in the course of his or her employment or engagement by the Member in the Relevant Function and caused within the Territorial Limits during the Membership Year and on or after the Membership Date, the Employers’ Liability Claim will be:

#### 1.1 legal liability to such Relevant Person for Compensation

and

#### 1.2 Costs and Expenses

### 2. Extensions to Schedule 2

For the purposes of these Rules, an Employers’ Liability Claim will include the following:

#### 2.1 Legal Expenses arising from Health and Safety Legislation

(a) In the event of any act or omission or alleged act or omission leading to criminal proceedings brought in respect of a breach of the Health and Safety at Work Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or similar safety legislation of Great Britain, Northern Ireland, the Isle of Man or the Channel Islands

or

(b) In the event of an incident which results in an Inquiry ordered under the Health and Safety Inquiries (Procedure) Regulations 1975

which arises in connection with the Relevant Function and which occurs during the Membership Year and on or after the Membership Date within the Territorial Limits.

The Scheme will provide indemnity against legal fees and expenses (as approved by the Administrator, in writing) incurred in representing the Member in such proceedings including appeals against results of such proceedings.

This indemnity will not apply:

- (a) in respect of fines or penalties of any kind;
- (b) to proceedings relating to the health and safety of any person other than a Relevant Person;
- (c) to proceedings consequent upon a deliberate act or omission by the Member;
- (d) to persons other than the Member or Relevant Person.

#### 2.2 Unsatisfied Court Judgements

In the event of a judgement for damages being obtained by any Relevant Person in respect of Bodily Injury to the Relevant Person caused during any Membership Year and on or after the Membership Date and arising out of and in the course of employment by the Member in the Relevant Function against any company or individual operating from premises within the Territorial Limits in any Court situated in those countries and remaining unsatisfied in whole or in part six months after the date of such judgement, the Scheme will at the request of the Member indemnify the Relevant Person or the personal representatives of the Relevant Person up to the amount of any such damages and any awarded costs to the extent that they remain unsatisfied.

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Provided that:

- (a) there is no appeal outstanding
- (b) if any payment is made hereunder the Relevant Person or the personal representatives of the Relevant Person shall assign the judgement to the Scheme.

### 2.3 Indemnity to Other Persons

If the Member so requests the Scheme will indemnify:

- (a) any Relevant Person;
- (b) any Relevant Person's personal representative in respect of legal liability incurred;
- (c) any principal for whom the Member is carrying out a contract for the performance of work but only to the extent required by the contract conditions and is considered reasonable in the view of the Administrator;
- (d) the owners of the plant hired in by the Member but only to the extent required by the hiring conditions and provided always that the terms upon which the Member hires the plant are no more onerous than the standard form of contract of the Contractors' Plant Association (CPA) or Hire Association of Europe;
- (e) the officers, committees and members of organisations established in order to provide canteen or sports and social facilities or educational or welfare services primarily for the benefit of Relevant Persons;
- (f) persons providing first aid, ambulance, fire or security services primarily in connection with the Premises;

against legal liability in respect of which the Member would have been entitled to Indemnity under this Schedule 2 if the claim has been made against the Member.

### 3. Exceptions to Schedule 2.

An Employers' Liability Claim will not include:

#### 3.1 any Bodily Injury sustained by any Relevant Person

- (a) carried in or on a vehicle
- or
- (b) entering or getting on to or alighting from a vehicle

where such Bodily Injury is caused by or arises out of the use by the Member of a vehicle on the road.

For the purposes of this Exclusion the expressions "road", "use" and "vehicle" have the same meanings as in the Road Traffic Act 1988 or similar subsequent legislation;

#### 3.2 any liability in respect of any claim arising in connection with work undertaken in or on (including travel to from and within) any offshore accommodation, exploration, drilling or production rig installation or offshore support vessel.

Any Member requiring cover in the above circumstance may make a specific representation to the Administrator who retains the discretion to extend Scheme cover in return for the payment of an additional contribution.

# SCHEDULE 3 – PUBLIC AND PRODUCTS LIABILITY CLAIM

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## Qualifying Liability :

### 1. Definition

In the event of accidental

#### 1.1. Personal Injury or

#### 1.2. loss of or damage to Property or

#### 1.3. obstruction, trespass, nuisance or interference with any right of way, air, light, water or other easement or loss of amenities

which arise in connection with the Relevant Function and which occur during the Membership Year and on or after the Membership Date and within the Territorial Limits, the Public and Products Liability Claim will be legal liability for Compensation, Costs and Expenses.

### 2. Extensions to Schedule 3

For the purposes of these Rules, a Public and Products Liability Claim may (provided that in respect of sub paragraphs 2.2 to 2.15 inclusive the circumstances arise in connection with the Relevant Function and that the event giving rise to legal liability occurs during the Membership Year and on or after the Membership Date and within the Territorial Limits) include:

#### 2.1 Indemnity to Other Persons

If the Member so requests the Scheme will indemnify:

- (a) any Relevant Person;
- (b) any Relevant Person's personal representative in respect of legal liability incurred;
- (c) any principal for whom the Member is carrying out a contract for the performance of work but only to the extent required by the contract conditions and is considered reasonable in the view of the Administrator;
- (d) the owners of plant hired in by the Member but only to the extent required by the hiring conditions and provided always that the terms upon which the Member hires the plant are no more onerous than the standard form of contract of the Contractors' Plant Association (CPA) or Hire Association of Europe;
- (e) the officers, committees and members of organisations established in order to provide canteen or sports and social facilities or educational or welfare services primarily for the benefit of any Relevant Person;
- (f) persons providing first aid, ambulance, first or security services primarily in connection with the Premises;

against legal liability in respect of which the Member would have been entitled to indemnity under this Schedule 3 if the claim had been made against the Member.

#### 2.2 Legal Expenses arising from Health and Safety Legislation

- (a) In the event of any act or omission or alleged act or omission leading to criminal proceedings brought in respect of the Health and Safety at Work etc Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or similar safety legislation of Great Britain, Northern Ireland, the Isle of Man or the Channel Islands

or

- 
- (b) In the event of an incident which results in an Inquiry ordered under the Health and Safety Inquiries (Procedure) Regulations 1975

which arises in connection with the Relevant Function and which occurs during the Membership Year and on or after the Membership Date and within the Territorial Limits the Scheme will provide indemnity against legal fees and expenses (as approved by the Administrator in writing) incurred in representing the Member in such proceedings including appeals against the results of such proceedings.

This indemnity will not apply:

- (a) in respect of fines or penalties of any kind;
- (b) to proceedings relating to the health and safety of any Relevant Person;
- (c) to proceedings consequent upon a deliberate act or omission by the Member;
- (d) to persons other than the Member or any Relevant Person.

### 2.3 Defective Premises Act

Where the Member is legally liable for accidental Bodily Injury or loss of or damage to Property by virtue of the Defective Premises Act 1972 or the Defective Premises (Northern Ireland) Order 1975 in connection with any premises which have been disposed of by the Member and which prior to disposal were owned by the Member the Scheme will provide indemnity against such legal liability, provided that

- (a) the Bodily Injury or loss of or damage to Property giving rise to such legal liability occurs during the Membership Year and or on after the Membership Date; and
- (b) the Scheme will not provide indemnity in respect of the costs incurred in removing, rebuilding, repairing, rectifying or replacing any such premises.

### 2.4 Motor Contingent Liability

Where the Member is legally liable to pay for accidental Bodily Injury or loss of or damage to Property arising out of the use of any motor vehicle in connection with the Relevant Function the Scheme will indemnify the Member against such legal liability.

This indemnity will not apply:

- (a) in respect of any vehicle owned or provided by the Member;
- (b) in respect of loss of or damage to such vehicle or to goods conveyed therein or thereon;
- (c) while such vehicle is being driven by the Member's representative or by any person who to the knowledge of the Member or of the Member's representative does not hold a licence to drive such vehicle unless such person has held and is not disqualified for holding or obtaining such a license;
- (d) to legal liability in respect of which the Member is entitled to indemnity under any insurance policy;
- (e) outside the Territorial Limits.

For the purposes of this sub paragraph 2.4 the term Member shall mean only the Member and no other party.

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## 2.5 Overseas Personal Liability

Where any Relevant Person is visiting a country outside the Territorial Limits for less than six months continuously in connection with the Relevant Function the Scheme will provide indemnity to the Member and if the Member so requests to any Relevant Person or any spouse or child of the Relevant Person accompanying such Relevant Person against legal liability incurred in a personal capacity for accidental Bodily Injury or loss of or damage to Property occurring during such a visit.

The indemnity described in this sub paragraph 2.5 will not apply to legal liability:

- (a) arising from any agreement or contract unless liability would have existed otherwise;
- (b) arising out of the ownership or occupation of land or buildings;
- (c) arising from the ownership, possession or use of wild animals, firearms, (other than sporting guns) mechanically propelled vehicles, aircraft or water craft.

## 2.6 Tenant's Liability for Hired or Rented Premises

Where the Member is legally liable for loss of or damage to premises (or fixtures or fittings thereof) hired or rented to the Member for the purpose of occupancy by the Member the Scheme will provide indemnity against such legal liability.

This indemnity will not apply to loss or damage caused by fire or any other peril against which a tenancy or other agreement stipulates that insurance shall be effected by or on behalf of the Member.

## 2.7 Liability for Buildings Temporarily Occupied

Where the buildings are temporarily occupied by the Member for the purposes of carrying out work in connection with the Relevant Function the Scheme will provide indemnity against legal liability in respect of loss of or damage to such buildings or their contents occurring during the Member's occupancy provided that such buildings are not owned, leased, hired or rented by the Member or any sub-contractor acting for or on behalf of the Member.

## 2.8 Car Park and Cloakroom Liability

Where vehicles or personal effects of persons other than the Member are held in trust by or in the custody or control of the Member the Scheme will provide indemnity against legal liability in respect of loss of or damage to such Property provided that such property

- (a) is not being stored for a period in excess of 7 days by the Member for a fee or other consideration
- and
- (b) is not held in trust by or in the custody or control of the Member for the purposes of work being carried out on such Property.

## 2.9 Property being worked upon

Where the Member is working on Property not belonging to the Member or in the Member's custody or control and causes damage to such Property the Scheme will provide indemnity against legal liability for such damage.

## 2.10 Use of Mobile Plant

Where any mobile crane or excavator or other item of mobile plant is in use solely as a tool of trade the Scheme will provide indemnity against legal liability for accidental

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Bodily Injury or loss of or damage to Property caused by such use other than loss or damage to the plant itself or to anything being lifted, lowered or pulled by such plant. The indemnity will not apply in circumstances where it is compulsory for the Member to insure or provide security as a requirement of any road traffic legislation.

#### 2.11 Obstructing Vehicles

Where any vehicle is causing an obstruction and interfering with the performance of the business of the Member the Scheme will provide indemnity against legal liability for accidental Bodily Injury or loss of or damage to Property arising from the movement of such vehicle by the Member or any Relevant Person or the application of a wheel clamp to the vehicle, provided that

- (a) if such obstructing vehicle is being moved on a road within the meaning of the Road Traffic Acts such use will be restricted solely to the minimum movement of the vehicle required to obtain access to or exit from the Member's premises;
- (b) if a wheel clamp is attached to a vehicle a bold warning notice to this effect will be attached to the windscreen of such vehicle.

The indemnity in this sub paragraph 2.11 will not apply in circumstances where it is compulsory for the Member to insure or provide security as a requirement of any road traffic legislation.

#### 2.12 Consumer Protection Act 1987 and Food Safety Act 1990

The Scheme will provide indemnity to the Member and if the Member so requests any Relevant Person in respect of

- (a) costs of prosecution awarded against the Member or any Relevant Person
- (b) legal fees and expenses incurred with the Administrator's written consent in defence of and

arising from criminal proceedings brought or in an appeal against conviction from such proceedings in respect of a breach of Part II of the Consumer Protection Act 1987 or of Part II of the Food Safety Act 1990, provided that

- (a) the proceedings relate to an offence committed or alleged to have been committed during a Membership Year and on or after the Membership Date and in the course of the Relevant Function
- (b) the indemnity in this sub paragraph 2.12 will not apply
  - (i) in respect of fines or penalties of any kind;
  - (ii) to proceedings consequent upon any deliberate act or omission.

#### 2.13 Advertising Liability

The Scheme will provide indemnity to the Member in respect of the following offences that result from the advertising of the Member's products or services

- (a) libel and slander;
- (b) written or spoken material made public which belittles the product or service of others;
- (c) written or spoken material made public which violates an individual's right to privacy;

- 
- (d) unauthorised taking of advertising ideas or style of business;
  - (e) infringement of copyright title or slogan.

#### 2.14 Good Samaritans Act

The Scheme will provide indemnity at the request of the Member as if a separate Membership had been issued to any Relevant Person qualified as a first aider who is not otherwise qualified as a healthcare professional for all sums including costs and expenses that the Relevant Person becomes legally obliged to pay as compensation for Bodily Injury resulting from any act or omission whilst performing a Good Samaritans Act provided that such persons are acting within the accepted parameters of their professional training.

*“Good Samaritans Act”* shall mean treatment administered at the scene of a medical emergency, accident or disaster by the Member’s qualified first aiders who are not otherwise medically qualified and who are present by chance and not in connection with a Relevant Function of the Member.

#### 2.15 Data Protection Act 1984

In the event of any proceedings brought against the Member by virtue of Sections 22 or 23 of the Data Protection Act 1984 or any subsequent updating or replacement acts (and with the Data Protection Act 1984, the “Acts”) the Scheme will provide indemnity against

- (a) legal Costs and Expenses incurred in connection with the defence of such proceedings
- (b) legal liability for Compensation to any individual who is the subject to personal data held by the Member and who suffers damage or distress by reason of
  - (i) the inaccuracy of the data, or
  - (ii) the loss of the data, or
  - (iii) the destruction of the data without the authority of the Member, or
  - (iv) the disclosure of the data or access having been obtained to the data without the authority of the Member

as described in the Acts.

The Scheme shall not be liable under this sub paragraph 2.15 for

- (a) Personal Injury other than as described above or any loss of or damage to Property or any consequential loss;
- (b) any liability which results from the Member having authorised the destruction or disclosure of data or from any other deliberate act or omission by the Member and which could reasonably have been expected to arise having regard to the nature and circumstances of such act or omission;
- (c) any fine or penalty or statutory payment;
- (d) fraud, dishonesty, insolvency, financial default, conspiracy, conversation, deceit, intimidation, inducement of breach of contract, injurious falsehood or breach of confidence;
- (e) any act of libel or slander or defamation;

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- (f) any liability assumed by the Member by agreement and which would not have attached in the absence of such agreement or any liability in respect of liquidated damages or under any penalty clause;
  - (g) any legal costs or expenses or any financial losses in respect of an order for rectification or erasure of data or any order requiring the data to be supplemented by any other statements.

The liability of the Scheme under this sub paragraph 2.15 for all Compensation payable to any claimant or any number of claimants in respect of or arising out of any one event or events of a series consequent on or attributable to one source or original cause shall not exceed £50,000.

Further the maximum sum payable under this sub paragraph 2.15 in any one Membership Year shall not exceed £500,000.

### 3. Exceptions to Schedule 3

A Public and Products Liability Claim will not include:

- 3.1 Personal Injury to any Relevant Person arising out of and in the course of employment by the Member in connection with the Relevant Function;
- 3.2 Liability arising out of the possession, ownership or use by or on behalf of the Member or any person entitled to indemnity under this Schedule 3 of any
  - (a) mechanically propelled vehicle or trailer attached thereto used in circumstances in respect of which insurance or security is necessary to meet the requirements of Road Traffic legislation;
  - (b) aircraft, aerial device, hovercraft or water craft.

Provided there is no indemnity afforded under any more specific insurance this exception will not apply to

- (i) the loading or unloading of motor vehicles or trailers
  - (ii) the circumstances described in sub paragraphs 2.4, 2.10 or 2.11
  - (iii) water craft which are less than 8 metres in length
  - (iv) barges used solely on inland waterways;
- 3.3 Loss of or damage to
  - (a) property belonging to or hired to the Member;
  - (b) property which is held in trust by or held in the custody or control of the Member or any Relevant Person or any party who is carrying out work on behalf of the Member where such property is held for the purposes of
    - (i) sale, supply, transportation or storageor
    - (ii) work being carried out at the Member's normal place of business or that of the party carrying out the work;
  - (c) property for which there is a contractual requirement to effect insurance (other than public liability insurance);

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- (d) property for which there is a contractual requirement to effect insurance by reason of Clause 21.2.1 of the 1980 Edition of the Joint Contracts Tribunal Conditions of Contract (or the corresponding clause in any prior version or any subsequent revision or substitution thereof) or by any clause or similar intent under any other conditions of contract;
- 3.4 (a) Loss of or damage to  
or  
(b) the cost incurred by anyone in repairing, removing, replacing, re-applying, reinstating or rectifying  
any Products Supplied other than Products Supplied under a separate, previously completed contract;
- 3.5 The cost incurred by anyone in  
(a) recalling or altering or making refunds in respect of any Products Supplied  
(b) remedying any defects or alleged defects in land or buildings or structures or other premises disposed of by the Member;
- 3.6 Liquidated damages or penalty clauses or fines or punitive or exemplary damages or any damages resulting from the multiplication of compensatory damages;
- 3.7 Liability arising out of Products Supplied with the knowledge of the Member by or on behalf of the Member which could affect  
(a) the navigation, propulsion or safety of any aircraft or other aerial device, or  
(b) the safety or operation of nuclear installations or offshore accommodation, exploration, drilling or production rig/installation or offshore support vessel;
- 3.8 Any Products Supplied by or on behalf of the Member where legal liability has been accepted by agreement (other than liability arising out of a condition or warranty of goods implied by Law) unless such liability would have attached in the absence of such agreement;
- 3.9 All claims for pollution or contamination of buildings or other structures or of water or land or the atmosphere and all Personal Injury or loss of or damage to Property directly or indirectly caused by such pollution or contamination other than caused by a sudden, identifiable, unintended and unexpected incident which occurs in its entirety at a specific time and place during the Membership Year and on or after the Membership Date (a "*Pollution Liability Claim*").  
  
All pollution or contamination which arises out of one incident shall be deemed to have occurred on the date that the Member first becomes aware of such incident.  
  
The liability of the Scheme for pollution or contamination shall not exceed in the aggregate the sum of £10,000,000 in respect of all claims during any one Membership Year;
- 3.10 Any liability arising in connection with work undertaken in or on any offshore accommodation, exploration, drilling or production rig/installation or offshore support vessel;
- 3.11 Any liability arising from  
(a) the proprietary manufacture of medicines drugs or any other pharmaceutical goods other than for use or application in the course of the Relevant Function

- 
- (b) incineration and other activities related to clinical waste disposal other than the packaging and storage of clinical waste in preparation for removal from the premises
  - (c) clinical trials and participation in clinical trials carried out by or on behalf of the Member;

3.12 Any liability in respect of advertising injury that results from

- (a) the actions of any persons or organisation in the business of advertising, publishing or broadcasting;
- (b) the wrong description of the price of goods, products or services;
- (c) the failure of goods, products or services to conform with advertising quality or performance;
- (d) the failure of any person or organisation to do what is required by contract or agreement, however, this exclusion does not apply to the unauthorised taking of advertising ideas if the contract or agreement does not specifically prohibit such taking.

4. **Financial Loss Extension to Schedule 3**

A Public and Products Liability Claim may also include legal liability for Financial Loss as defined below in respect of claims first made against the Member (each a "Financial Loss Claim") during the Membership Year and on or after the Membership Date within the Territorial Limits subject to the terms, exceptions and conditions of this Scheme.

4.1 Limit of Liability

The liability of the Scheme under this extension including all Costs and Expenses shall not exceed in the aggregate the sum of £250,000 in respect of all claims during any one Membership Year.

4.2 Financial Loss

For the purpose of this paragraph 4 "*Financial Loss Claim*" shall mean a financial cost, expense or other pecuniary loss suffered by any person, firm or company other than the Member or any Relevant Person and not occasioned by Personal Injury or loss of or damage to the Property.

5. **Exceptions to Financial Loss Extension to Schedule 3**

A Financial Loss Claim will not include:

- 5.1 any event which results from a deliberate act or omission of the Member and which could reasonably have been expected having regard to the nature and circumstances of such act or omission;
- 5.2 fraud, dishonesty, insolvency, financial default, conspiracy, conversion, deceit, intimidation, inducement of breach of contract, injurious falsehood or passing off or infringement of tradework, trade name, merchandise mark, registered design, copyright or patent right;
- 5.3 any act of libel or slander or defamation;
- 5.4 the abandonment or postponement of any exhibition, meeting, function or other event organised by the Member;

- 
- 5.5 liability arising by virtue of the Data Protection Act 1984 or subsequent updating or replacement Acts;
  - 5.6 financial loss arising solely from the failure or unsuitability of products to perform the function for which they were manufactured, sold, supplied, repaired, serviced, tested or processed;
  - 5.7 financial loss suffered as a result of non-delivery or late delivery of goods or non-completion or late completion of works or operations by or on behalf of the Member;
  - 5.8 prototype goods or goods which are supplied on an experimental or trial basis;
  - 5.9 delays, strikes or labour disturbances;
  - 5.10 financial loss sustained by any party to any reciprocal arrangement for the storage or processing of computer data or use of computer facilities;
  - 5.11 any liability which is inevitable having regard to the circumstances and nature of the work undertaken or Product Supplied;
  - 5.12 liability arising or indirectly in connection with claims arising or proceedings commenced in the United States of America or Canada.



# SCHEDULE 4 – DIRECTORS’ AND OFFICERS LIABILITY CLAIM

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Qualifying Liability :

1. **Definition**

In the event of any Claim first made against an Indemnified Person during a Membership Year and on or after the Membership Date for any wrongful act the Directors’ and Officers’ Liability Claim will be for the Loss of the Indemnified Person.

2. For the purposes of this Schedule 4:

“*Claim*” means (i) any suit or proceeding brought by any person or organisation against an Indemnified Person for monetary damages or other relief, or (ii) any written demand from a person or organisation that it is the intention of such person or organisation to hold one or more Indemnified Persons responsible for the results of any specified wrongful act.

“*Defence costs*” means reasonable and necessary fees (including legal fees), costs and expenses incurred with the written consent of the Administrator resulting solely from the investigation, adjustment, defence and appeal of any claim or criminal prosecution against an Indemnified Person or representation of an Indemnified Person at any official investigation into the affairs of the Member but shall not include salaries of directors, officers or employees of the Member.

“*Indemnified Person*” means either:

- (a) a Board Member; or
- (b) a Relevant Person who is not a Board Member.

“*Loss*” means damages, judgements, settlements and Defence Costs. However, Loss shall not include civil or criminal fines or penalties imposed by law, punitive or exemplary damages (other than damages awarded for libel and slander), taxes, any amount for which an Indemnified Person is not legally liable or matters which may be deemed uninsurable.

“*Personal Injury*” means bodily injury and wrongful arrest, detention, imprisonment and malicious prosecution.

“*Wrongful Act*” means:

- (a) in the case of the Board Member, a liability arising out of any indemnity properly given by any Member to that Board Member, and any liability in respect of any consequential or ancillary expense arising in connection with the liability arising from the indemnified liability;
- (b) in the case of a Relevant Person who is not a Board Member, any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, omission, breach of warranty of authority, libel and slander or any other act committed by any Relevant Person not being a Board Member solely in the course of a Relevant Function. Same or related wrongful acts shall constitute a single wrongful act.

3. **Exceptions to Schedule 4**

A Directors’ and Officers’ Liability Claim will not include any claim for Loss made against an Indemnified Person:

- 3.1 arising out of, based upon or attributable to the gaining in fact of any personal profit or advantage to which an Indemnified Person was not legally entitled;
- 3.2 arising out of, based upon or attributable to the committing in fact of any dishonest or fraudulent act;

(for the purpose of determining the applicability of sub paragraphs 3.1 and 3.2 the wrongful acts of any Indemnified Person shall not be imputed to any other Indemnified Person)

- 
- 3.3 arising out of, based upon or attributable to the facts alleged, or to the same or related wrongful acts alleged or contained, in any claim which has been reported under any previous policy of insurance;
- 3.4 arising out of, based upon or attributable to any pending or prior litigation at the Membership Date, or alleging or derived from the same or essentially the same facts as alleged in any pending or prior litigation, or any pending demand, suit or other proceeding, or order, decree or judgement entered, against any Indemnified Person before the Membership Date;
- 3.5 arising out of, based upon or attributable to any Personal Injury or damage to Property provided, however, that the exclusion in this sub paragraph 3.5 shall not apply to any claim for financial damages which do not relate to compensation for Personal Injury;
- 3.6 arising out of, based upon, attributable to, or in any way involving, directly or indirectly
- (i) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants (meaning, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste including but not limited to material to be recycled, reconditioned or reclaimed); or
  - (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants, nuclear material or nuclear waste.

The exclusion in this sub paragraph 3.6 shall not apply to Defence Costs incurred by a Member, provided however, that the aggregate limit of liability that the Scheme shall be liable to pay in respect of such claim(s) or development(s) thereof is specifically sublimited to £250,000 in any one Membership Year;

- 3.7 in a capacity as trustee or fiduciary under law (statutory or non-statutory including common) or administrator of any pension, profit sharing or employee benefit programme provided that the exclusion in this sub paragraph 3.7 shall not be deemed to apply to an Indemnified Person acting in their capacity as a pensions administrator of the Member;
- 3.8 arising out of, based upon or attributable to, or in any way involving, directly or indirectly any allegation of malicious falsehood.

# SCHEDULE 5 – PROFESSIONAL INDEMNITY CLAIM

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## Qualifying Liability :

### 1. Definition

The Professional Indemnity Claim will be for Compensation and Costs and Expenses incurred in or about the conduct of a Relevant Function arising from any Claim or Claims made against the Member.

1.1 by reason of an actual or alleged breach of professional duty committed by

(a) the Member, or

(b) any Relevant Person

1.2 by reason of any dishonest, fraudulent, criminal or malicious act on the part of any Relevant Person

1.3 for libel, slander or defamation written or spoken by

(a) the Member, or

(b) any Relevant Person

1.4 which arises from the physical destruction or damage, loss or mislaying of any document which after diligent search cannot be found.

### 2. Exceptions to Schedule 5

A Professional Indemnity Claim will not include any claim which:

2.1 results directly or indirectly from Personal Injury sustained by any Relevant Person arising out of and in the course of his/her employment by the Member or for any breach of any obligation owed by the Member to any Relevant Person;

2.2 results directly or indirectly from the ownership, possession or use by or on behalf of the Member of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

2.3 results directly or indirectly from any dishonest, fraudulent, criminal or malicious act or omission of the Member, other than as provided by sub paragraphs 1.2 and 2.4;

2.4 under sub paragraph 1.2, from any dishonest, fraudulent, criminal or malicious act or omission committed by any person after the discovery of reasonable cause for suspicion of such act or omission in relation to that person,

and provided that

(a) no person committing or condoning a dishonest, fraudulent, criminal or malicious act or omission shall be entitled to indemnity,

(b) the following shall be deducted from any amount payable

(i) any monies which but for such act would be due from the Member to the person committing or condoning such act

(ii) any monies held by the Member and belonging to such person;

2.5 exists to the extent of any fine or penalty, punitive, exemplary or non-compensatory damages (other than exemplary damages in respect of libel, slander or defamation);

2.6 results from any agreement by the Member in so far as liability under such agreement exceeds the Member's liability in the absence of such agreement;

- 
- 2.7 results from the Member's associations whilst acting in consortia or joint venture with others, other than in respect of loss(es) arising from the Member's own acts or omissions;
  - 2.8 is brought about by, or contributed to, or consequent upon any circumstances existing prior to the Membership Date and which the Member ought reasonably to have known might give rise to a loss;
  - 2.9 arises where action for damages is brought in a court of law outside the Territorial Limits, or where action is brought in a court of law within the Territorial Limits to enforce a foreign judgment whether by way of reciprocal agreement or otherwise;
  - 2.10 is based upon, arising out of or relating directly or indirectly from, in consequence of or in any way involving pollution;
  - 2.11 arises from any Claim for Personal Injury sustained by any person (other than emotional distress arising from any libel, slander or defamation), or for any loss, damage or destruction of property, including loss of use thereof unless such Claim directly results from negligent advice, design, specification or formula;
  - 2.12 results from or relating to Products Supplied by the Member or any person, firm or company acting for or on behalf of the Member;
  - 2.13 is a result of or relating directly or indirectly from the insolvency or bankruptcy of the Member;
  - 2.14 arises from any Claim alleging infringement of copyright, patent, registered design, trade mark or passing off and/or any other intellectual property rights;
  - 2.15 is in respect of costs and expenses incurred by the Member in the replacement or restoration of any document arising directly or indirectly from the failure or inefficacy of any programme, instruction or data for use in any computer or other electronic data processing device, equipment or system occasioned other than through its physical destruction or damage;
  - 2.16 is any liability to which a Member is subject in respect of bodily injury which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 or the National Health Service (Existing Liabilities Scheme) Regulations 1996;
  - 2.17 arises from clinical trials and participation in clinical trials carried out by or on behalf of the Member.

# SCHEDULE 6 – PERSONAL ACCIDENT CLAIM

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Qualifying Liability :

1. **Definition**

In the event of the Person sustaining Accidental Bodily Injury during the Membership Year and on or after the Membership Date and during the Operative Time(s) a Personal Accident Claim will compensate the Member by payment of the appropriate Benefit as set out below.

2. For the purposes of this Schedule 6

2.1 *“Person”* means:

For Category (a) - Assault

Any Relevant Person.

For Category (b) - Call-out Teams

Any Relevant Person who is also a member of a Member's emergency call-out team or emergency transfer/retrieval team.

2.2 *“Operative Time”* means:

For Category (a)

In the course of or as a direct consequence of the Person acting in the course of the Relevant Function for Accidental Bodily Injury occasioned by assault by a person or animal.

For Category (b)

During emergency call out or emergency transfer/retrieval only, including exit, on scene and return for Accidental Bodily Injury occasioned other than by an excluded cause.

2.3 *“Accidental Bodily Injury”* means

Accidental bodily injury sustained by the Person which solely and independently of any other cause (except illness directly resulting from or medical or surgical treatment rendered necessary as a result of such injury) occasions the death of or loss or disablement to the Person within 24 months from the date such injury is caused.

2.4 *“Benefits”* means:

Accidental Death	£20,000
Permanent Total Disablement	£20,000
Loss of Limb or Eye	£20,000

Only one Benefit shall be payable in respect of any one Accidental Bodily Injury to a Person.

The maximum liability of the Scheme for Benefits in the aggregate in respect of all Persons shall not exceed £250,000 any one incident. Otherwise the individual Benefits shall be reduced proportionately until the total does not exceed £250,000.

2.5 *“Loss of Eye”* means:

Total and Permanent loss of sight in one or both eyes.

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2.4 *“Loss of Limb”* means:

- (a) Permanent loss by physical separation of one or more
  - (i) hands at or above the wrist
  - (ii) feet at or above the ankle
- (b) Permanent loss of use of one or more hands or feet

2.7 *“Permanent”* means:

A condition of disability which in the opinion of the Scheme’s medical advisors at 12 months after the date of the incident giving rise to Accidental Bodily Injury is likely to continue without improvement for the rest of the Person’s life.

2.8 *“Permanent Total Disablement”* means:

Permanent disablement wholly preventing the Person from engaging in or giving attention to the Person’s usual business profession or occupation caused other than by Loss of Limb or Eye which disablement lasts without interruption for more than 12 months from the date of the Accidental Bodily Injury.

### 3. **Exceptions to Schedule 6**

A Personal Accident Claim will not include:

- 3.1 Accidental Bodily Injury sustained by any person aged 70 years or over;
- 3.2 The Person suffering from any disability due to a gradually operating cause;
- 3.3 The Person being under the influence or being directly or indirectly affected by alcohol or drugs or any condition thereby aggravated other than drugs taken under the direction of a registered medical practitioners (other than for the treatment of drug addiction);
- 3.4 Suicide attempted suicide or intentional self inflicted injury by the Person or from deliberate exposure to danger (except in an attempt to save human life) or from the Person’s own criminal act;
- 3.5 The Person engaging in or taking part in naval military or air force service or operations;
- 3.6 Accidental Bodily Injury resulting from war whether declared or not while a Relevant Person is in the Territorial Limits.

# INCOME GENERATION ACTIVITIES – SUMMARY OF COVER



# INCOME GENERATION ACTIVITIES

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## Summary of Cover under the NHS Litigation Authority Non-Clinical Risks Schemes

The Property Expenses Scheme (PES)

There is no restriction on cover for income generation activities under the PES.

The Liabilities to Third Parties Scheme (LTPS)

The following activities, whilst they are being conducted "Outside the NHS", have been categorised as either included or excluded from the LTPS in respect of cover for Public/Products Liability and non-clinical Professional Indemnity. All activities benefit from Employers' Liability cover.

"*Outside the NHS*" means the provision of services, supply of facilities or products to any party other than NHS Trusts, other NHS organisations, NHS staff (in their capacity as employees) and NHS patients (in their capacity as patients).

All activities are covered by the LTPS if they are conducted within the NHS i.e. they involve other NHS Trusts, other NHS organisations, NHS staff and NHS patients.

Activities that do not appear in this Summary should be referred to the helpline (0845 6010193).

Trusts have the option to purchase commercial insurance in respect of Public/Products Liability and non-clinical Professional Indemnity for those activities that are not covered by the LTPS.

### Summary of Activities "Outside the NHS"

#### Key:

"Outside the NHS" –

- Activity Included
- Activity Excluded

- Accommodation for NHS Staff (board / lodging)
- Accommodation for Third Parties (board / lodging)
- Administration Services
- Advertising Rights / Space
- Advice on NHS / Statutory Standards
- Aerial Masts Rental
- Ambulance Services - Call / Message Handling
- Ambulance Services - Repair of Own Vehicles under Warranty
- Ambulance Services - Static Attendance
- Ambulance Services - Transport of Persons (Non-Motor)
- Amenity Beds (NHS patients' relatives etc)
- Asbestos Testing / Analysis
- Biological Services
- Blood Service / Sales / Handling
- Breast Screening
- Car Parks including Wheel Clamping
- Category II Fees (other than Public Sector)
- Catering
- Chaplains
- Childminder Inspection Visits
- Childrens' Entertainment
- Chiropody / Podiatry
- Clinical & Diagnostic Support Services (e.g. haematology, pharmacy, pathology)
- Clinical Audit
- Clinical Waste Disposal (not incineration)
- Clinical Waste Incineration
- Computer Software (sale or design)
- Counselling of Third Party Staff
- Courier Service
- CSSD & HSDU - Sterilisation Services
- Dental Services

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**Key:**

“Outside the NHS” –

■ Activity Included

● Activity Excluded

- Dietetics
- Domestics
- Education Fees / Overseas Students / Student Placements
- Equipment Storage / Distribution
- Estates Consultancy Services including Design
- Facilities Management
- Financial Services
- Fitness Centres
- Fitness Testing
- Food Testing
- Franchise Fees and Commissions
- Fund Raising Events and Sponsorship
- Gardening Services
- General Health Screening for Employers / Individuals
- Hairdressing
- Healthcare Services to the Public Sector<sup>1</sup>
- Health Centre Charges
- Health Promotions and Leaflets
- Health & Safety, and Fire Training
- Hearing Tests
- Hearing Therapy Services
- Hire / Secondment of Staff
- Hire of “TENS”
- Hire of Cleaning Equipment to Staff
- Hire of Dental Facilities
- Hire of Pagers
- Hire of TV and Videos
- Home Care Services
- Homeopathic Drugs
- Horticultural Produce
- Hospitality
- Incineration other than Clinical Waste
- Industrial Rehabilitation Unit
- Industrial Therapy (non-hazardous goods sold and services supplied in the normal course of patient rehabilitation)
- Infection Control
- Information Technology Services
- Interpreting / Translation Service
- Laboratory Tests
- Landscape Services
- Launderette
- Laundry / Dry Cleaning
- League of Friends - Shop
- Lease Car Handling Charge
- Lectures
- Legal Services
- Maintenance / Servicing of Medical and Other Equipment (EBME)
- Management Services
- Meals on Wheels (other than Public Sector)
- Medical Library
- Medical Photography / Imaging / Illustration
- Medical Physics

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<sup>1</sup> “Healthcare Services to the Public Sector” means the provision of goods or services related directly to the physical or mental well-being of persons other than NHS patients, under contract or arrangement with any central or local Government sponsored organisation or any registered charity. This includes healthcare services to the residents of a housing association or nursing home, where funding for these services is provided direct to the housing association or nursing home by the health authority or local authority.

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**Key:**

“Outside the NHS” –

■ Activity Included

● Activity Excluded

- Medical Records and Medical Notes
- Microbiology Tests
- Mobility Centre (Disabled Driver Assessment)
- Mortuary Fees
- MRI
- Needle Trading (other than Public Sector)
- Non-Medical Hospital Shop (Consumables, Books, Magazines etc)
- Nuclear Medicine Tests
- Nursery / Crèche / Playgroup Facilities
- Nursing Home Inspections
- Occupational Health Services
- Occupational Therapy
- Occupational Therapy Sales
- Opticians Shop
- Orange Badge (for disabled drivers)
- Orthotics
- Overseas Patients
- Pathology Tests (other than Public Sector)
- Patient Outings (i.e. involving third parties)
- Patient Transport (Non-Motor)
- Payroll Services
- Pensions Information (for employees)
- Pest Control
- Pharmaceuticals - Manufacture
- Pharmaceuticals - Sale / Distribution
- Pharmacy Shop
- Photocopying / Microfilming
- Physiotherapy Services
- Postage
- Postal Services
- Prescription Charges
- Printing
- Prison Service
- Private Patients (non-clinical) i.e. Accommodation / Hotel Services
- Psychiatric Reports
- Publications
- Quality Assurance
- Quality Control Laboratory
- Radiation Services - Badges, Protection, Consultancy Service, Personal Dose Monitoring
- Radiology (film copying and processing)
- Registration of Nursing Homes
- Rental (Land/Premises)
- Rental (Room Hire / Conference / Lecture Facilities)
- Rental (Shop Units)
- Research and Development Support Unit
- Sale / Hire of Baby Food / Clothes / Toys / Equipment / Bounty Packs
- Sale of Incontinence Products
- Sale of Nutrients
- Sale of Paintings / Art
- Sale of Obsolete and Decommissioned Equipment
- Sale of Patient Appliances e.g. Plaster Room, Audiology
- Sale of Personal Alarms
- Sale of Physiotherapy Items
- Sale of Radio Pharmaceuticals / Isotopes
- Sale of Medical Consumables

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**Key:**

“Outside the NHS” –

■ Activity Included

● Activity Excluded

- School Nursing (LEA)
- Security Services
- Sewing Room - Alterations Service
- Sight Tests
- Skin - Processing and Sale
- Social & Personal Care Service
- Social Club
- Social Services
- Speech Therapy Services to Special Schools
- Sports Injury Clinic
- Staff Lottery
- Sterile Fluid to Private Hospitals
- Telephone Services
- Telephones - Pay Phones and Private Use
- Theatre Fees and Equipment Hire
- Training
- Transport
- Travel Agency
- Travel Clinics
- Ultrasound Photographs
- Utilities (Sale of Heat, Light, Power etc)
- Vehicle Testing or Servicing
- Vending Machines
- Video Production
- Wheelchairs Repair / Hire
- X-Ray - Sale of Silver, Scrap, Film, Search Fees
- Yoga

# INCIDENT REPORT FORMS



# PROPERTY EXPENSES SCHEME – INCIDENT REPORT FORM

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Office Use Only  
Claim No:  
Date:

Please complete and return to:



5 Pemberton Row, London EC4A 3BA  
Telephone: 0171 842 0611 Fax: 0171 842 0620

## A. Trust Details

Name of Trust \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Post code \_\_\_\_\_ Tel. No \_\_\_\_\_

Membership No. \_\_\_\_\_ Contact Name \_\_\_\_\_

Tel. No. \_\_\_\_\_ (if different from above)

## B. Incident Details

Date \_\_\_\_\_ Exact Location \_\_\_\_\_

Brief Circumstances of Incident \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Remedial action taken \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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C. Witness Details

(A) Name \_\_\_\_\_ Grade \_\_\_\_\_ Dept \_\_\_\_\_

Address (if not staff) \_\_\_\_\_

(B) Name \_\_\_\_\_ Grade \_\_\_\_\_ Dept \_\_\_\_\_

Address (if not staff) \_\_\_\_\_

D. Details of Loss

Description of Property damaged/stolen	Owner of Property (i.e. employee/patient or visitor)	Estimated repair/replacement costs

E. Declaration

I declare that the above information is true and accurate.

Signed \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_ Date \_\_\_\_\_

# LIABILITIES TO THIRD PARTIES SCHEME – INCIDENT REPORT FORM

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Office Use Only  
Claim No:  
Date:

Please complete and return to:



5 Pemberton Row, London EC4A 3BA  
Telephone: 0171 842 0611 Fax: 0171 842 0620

## A. Trust Details

Name of Trust \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Post code \_\_\_\_\_ Tel. No \_\_\_\_\_

Membership No. \_\_\_\_\_ Contact Name \_\_\_\_\_

Tel. No. \_\_\_\_\_ (if different from above)

## B. Incident Details

Incident Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_

Cause of Incident \_\_\_\_\_  
(i.e. Trip, Lifting, Assault etc)

Incident Circumstances \_\_\_\_\_  
(i.e. what happened)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To whom was it reported? \_\_\_\_\_

Remedial action taken \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness details \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Formal claim made Yes  No

C. Claimant Details

Name \_\_\_\_\_ M  F

Address \_\_\_\_\_

\_\_\_\_\_ Postcode \_\_\_\_\_

Tel. No. \_\_\_\_\_

Employee  In/Out Patient  Visitor  Contractor

National Insurance No. (if known) \_\_\_\_\_

Average weekly earnings (if known) \_\_\_\_\_

D. If Employee / Contractor

Employee's Base \_\_\_\_\_

Occupation & Grade \_\_\_\_\_

Contractor \_\_\_\_\_

Contractor address \_\_\_\_\_

Purpose of visit \_\_\_\_\_

E. Details of Injury /  
Property Damage

Nature of injury (*i.e. sprain, fatal etc*) \_\_\_\_\_

Area of body affected \_\_\_\_\_

Treatment received \_\_\_\_\_

Details of Property Damaged \_\_\_\_\_

F. Absence from Work

From \_\_\_\_\_ to \_\_\_\_\_

Further absences (1) From \_\_\_\_\_ to \_\_\_\_\_

(2) From \_\_\_\_\_ to \_\_\_\_\_

G Declaration

I declare that the above information is true and accurate.

Signed \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_ Date \_\_\_\_\_