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**NATIONAL CASUALTY COMPANY****TINTELLECTUAL PROPERTY INSURANCE****INFRINGEMENT DEFENSE COST AND DAMAGES REIMBURSEMENT INSURANCE  
POLICY**

**(1991 – 1999) Intellectual Property Insurance Services Corporation, Inc.**

This Policy applies only to those CLAIMS for reimbursement that are first made to the Company during the POLICY PERIOD for LITIGATION EXPENSE arising out of COVERED LITIGATION under which the Named Insured becomes a defendant during the POLICY PERIOD. Coverage under this Policy is limited to reimbursement for LITIGATION EXPENSE and DAMAGES but does not include payment of any fines, or penalties including but not limited to punitive, exemplary, treble or multiple damages of any kind, non pecuniary relief and taxes assessed against the Named Insured. PLEASE NOTE THIS IS A DEFENSE COST AND DAMAGES REIMBURSEMENT POLICY ONLY. UNLESS SPECIFICALLY ASSUMED BY THE COMPANY IN WRITING, THE DEFENSE OF THE NAMED INSURED IN ANY ACITION, ADMINISTRATIVE PROCEEDING(S) OR CIVIL PROCEEDING(S) OF WHATEVER NATIRE IS AT ALL TIMES THE RESPONSIBILITY OF THE NAMED INSURED. Words and phrases appearing in capital letters have speci8al meaning; please refer to the DEFINITIONS (SECTION 1) below. Please also read the Terms, Conditions, and Exclusions of this Policy carefully and discuss its coverage with your professional advisor.

NOTICE: THE LIMIT OFINDEMNITY AVAILABLE TO PAY DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR LITIGATION EXPENSE. AMOUNTS INCURRED FOR LITIGATION EXPENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

**CONDITIONS PRECEDENT**

In reliance on the statements contained in the insurance application, which shall include a FAVORABLE INFRINGEMENT OPINION on NEW COVERED PRODUCTS and/or ESTABLISHED PRODUCTS if any, said application being attached hereto and made a part of this Policy, and in consideration of the payment of the premium specified on the Declarations Page hereof, the Company agrees with the Named Insured as follows :

**I. DEFINITIONS**

- A. POLICY PERIOD** shall mean the period from the Effective Date shown in Item 3 of the Declarations Page of this Policy to the expiration date shown in that Item or, if applicable, the Effective Date of cancellation of this Policy.
- B. CIVIL PROCEEDING (S)** means any legal proceeding, suit, cause of action or alternative dispute resolution proceeding, brought against the Named Insured during the POLICY PERIOD by one or more parties in a Federal District Court or United States Appellate Court, or if an alternative dispute resolution, in a proper forum.
- C. DAMAGES** means monetary sums paid to a claimant pursuant to either judgments, or settlements negotiated with the written consent of the Company , whichever is applicable, as
1. lost past profits and/or past royalties, or
  2. reasonable attorneys fees assessed by the Court against the Named Insured provided, however, that DAMAGES shall not include fines, penalties, including but not limited to punitive, exemplary or multiplied damages, non-pecuniary relief and taxes assessed against the Named Insured, or any amount for which the Named Insured is not financially liable or any amount as to which there is no legal recourse by the person who is awarded such relief against the named Insured, and any such matters which are uninsurable under the law pursuant to which this policy shall be construed.

- D. BODILY INJURY or PROPERTY DAMAGE** includes but is not limited to (1) Bodily injury, sickness, disease, occupational disease, death, shock, disability, mental anguish, mental injury, emotional upset, asbestosis, any trauma, suffered or alleged to be suffered by any person or entity; (2) Damage to tangible or intangible property; (3) Loss of, or loss of, tangible or intangible property; (4) Loss of, loss of use of, or interference with property rights; (5) All forms of radioactive contamination of property.
- E. ASBESTOS** includes but is not limited to Asbestos, Asbestos Products, Asbestos Fibers, Asbestos Particles, Asbestos Dust, or any product or goods containing Asbestos in any form.
- F. HANDLING, USE, MISUSE, or EXISTENCE** includes, bus is not limited to the manufacture, mining, use, sale, installation, distribution, removal, encapsulation, transportation, or presence of ASBESTOS. It includes the inspection for and exposure to ASBESTOS. It includes the failure to perform, or inadequate performance in said HANDLING, USE, MISUSE or EXSTENCE.
- G. ASBESTOS LIABILITY** means any liability arising directly or indirectly from loss, injury or damage caused by the HANDLING, USE, MISUSE or EXISTENCE of ASBESTOS.
- H. INVALIDITY COUNTERCLAIM** shall mean any legal action taken by the Named Insured in the course of and as part of COVERED LITIGATION which seeks invalidation of a COPYRIGHT, a TRADEMARK or one or more claims of a PATENT under which INFRINGEMENT is being asserted.
- I. TRADEMARK** shall mean a word, slogan, design or other symbol used to identify and distinguish goods or services which qualifies for legal status, under state or federal law, as a trademark, service mark, collective mark, certification mark or trade dress and which is identified on the Declarations page. Federally Registered Mark(s) is any Trademark which is registered on the Principal Trademark Register pursuant to 15 USC 1051(a) and which is identified by registration number on the Declarations Page. Federally registered Marks shall also include any Trademark registered on the Supplemental Register pursuant to 15 USC 1091.

- J. PATENT** shall mean any unexpired U.S. Patent included in COVERED LITIGATION.
- K. MANUFACTURED PRODUCT(S)** shall mean any work, word, slogan, symbol, design, process, machine, article of manufacture or composition of matter specifically enumerated on the Declarations Page of this Policy manufactured in the United States or abroad during the POLICY PERIOD and used, sold or offered for sale in the United States during the POLICY PERIOD falling into the following categories:
1. NEW COVERED PRODUCTS
  2. ESTABLISHED PRODUCTS
  3. MATURE PRODUCTS
- L. WORKS OF AUTHORSHIP** shall include the following:
1. (a) Literary Work;
  - (b) Musical works, including any accompanying word;
  - (c) Dramatic works, including any accompanying music;
  - (d) Pantomimes and choreographic works;
  - (e) Pictorial, graphic and sculptural works;
  - (f) Motion pictures and other audiovisual works;
  - (g) Sound recordings; and
  - (h) Architectural works
- M. COPYRIGHT** shall mean the rights in original WORKS OF AUTHORSHIP fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device as conferred by 17 USCA 106 provided such WORKS OF AUTHORSHIP have been registered in the U.S. Copyright office under 17 USCA 408.
- N. RE-EXAMINATION PROCEEDING** means a proceeding brought in the United States Patent and Trademark Office requesting re-examination of one or more claims of a PATENT under which claim(s) INFRINGEMENT is being asserted.

**O. INFRINGEMENT** means the unauthorized use, sale or offer for sale, by the Named Insured. Within the United States of America, its territories or possessions of any MANUFACTURED PRODUCT in violation of the enforceable and valid rights of another arising from the grant by the United States Patent & Trademark Office and/or the U.S. Registrar of Copyrights of any unexpired PATENT, TRADEMARK OR COPYRIGHT excluding rights arising under or enforceable by virtue of a Treaty with one or more foreign governments. INFRINGEMENT shall include in its meaning contributory infringement and inducement of infringe.

**P. INJUNCTION PROCEEDING** means any CIVIL PROCEEDING against the Named Insured to limit or cease specific activities with regard to MANUFACTURED PRODUCTS on the ground that the activities result in INFRINGEMENT, and which could result in a legally enforceable order against the Named Insured to limit or cease as aforesaid.

**Q. COVERED LITIGATION** shall mean the defense of A CIVIL PROCEEDING or any part thereof:

1. Which alleges INFRINGEMENT against the Named Insured, or
2. Which alleges INFRINGEMENT against the Insured's licensee named in Item 8 of the Declarations, or;
3. Which alleges INFRINGEMENT for which the Named Insured is responding on behalf of its customer pursuant to a manufacturer's warranty of non-infringement under Section 2.312 of the Uniform Commercial Code.

Provided that the Company, in response to a CLAIM, has stated in writing to the Named Insured that LITIGATION EXPENSE arising from such CIVIL PROCEEDING will be covered by this policy

**R. DEFENSE EXPENSES** shall mean sums of money which the Named Insured shall have incurred as reasonable and customary attorney's fees, costs, and disbursements, including, but not limited to, court costs, costs of depositions, transcripts, fees and expenses of expert witnesses, but only to the extent that those costs arise out of COVERED LITIGATION. DEFENSE EXPENSES includes the actual costs and

expenses incurred in asserting any INVALIDITY COUNTERCLAIM or initiating any RE-EXAMINATION PROCEEDING WHICH is a direct consequence of COVERED LITIGATION, provided however, that all such sums shall consume and not be in addition to the limits set forth in item 5 of the Declarations.

**S. LITIGATION EXPENSES (INCLUDED IN THE LIMITS OF LIABILITY)**

shall mean:

1. DEFENSE EXPENSES
2. INJUNCTION EXPENSES

**T. RECOVERED COSTS** shall mean any monies received by the Named Insured by way of penalty or punitive award, or the like, arising from the actions of the Plaintiff in a COVERED LITIGATION.

**U. INJUNCTION CLAIM** means any request made by a party in a INJUNCTION PROCEEDING against the Named Insured that the Named Insured limit or cease specific activities with regard to MANUFACTURED PRODUCTS on the ground that such activities result in INFRINGEMENT.

**V. CLAIM** means a demand on the Company by the Named Insured on the Company's properly completed and executed "Infringement Defense Claim" form for written acknowledgement that that LITIGATION EXPENSE and DAMAGES for a CIVIL PROCEEDING will be covered under this Policy. COVERED LITIGATION arising out of the same act or a duplication of an act or out of a series of interrelated acts shall be considered as giving rise to a single CLAIM covered by a single policy irrespective of the number of CIVIL PROCEEDING(S), Plaintiffs, Defendants, or the number of PATENTS, TRADEMARKS or COPYRIGHTS or the year or policy under which the CLAIM is made.

**W. INJUNCTION EXPENSE(S) (INCLUDED IN LIMITS OF LIABILITY)** means:

Reasonable expenses including but not limited to, court costs, costs of depositions, including fees and expenses of expert witnesses incurred by the Named Insured in defense, including appeals, of any INJUNCTION CLAIM or INJUNCTION CLAIMS first made against the Named Insured and reported in writing to the Company during the POLICY PERIOD or the extended reporting period (if

applicable) for any INJUNCTION PROCEEDING to which this policy applies, other than loss of earnings, expenses and costs incurred by the Named Insured for salaries and expenses of its officers, staff, in-house attorneys, directors, employees and outside attorneys or consultants functioning in the capacity of any of the foregoing; but only if such INJUNCTION PROCEEDING occurs during the POLITY PERIOD and solely in the regular, ordinary and usual course of the business of the Named Insured as that business existed on the first date of the Policy Period and as described in the application attached hereto and made apart hereof, and,

1. expenses incurred by the Company in any INJUNCTION CLAIM defended by the Company;
2. costs levied against the Named Insured in any such INJUNCTION CLAIM;
3. premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed the Company's then remaining applicable limit of indemnity and are required in any INJUNCTION CLAIM defended by the Company, provided however, neither this provision nor any other in this policy shall be construed as requiring the Company to commence or prosecute any appeal or to apply for or furnish such bonds.

**X. FAVORABLE INFRINGEMENT OPINION** means an opinion by the Company's selected patent attorney opining that there is no INFRINGEMENT of any unexplored U.S. PATENT, TRADEMARK or COPYRIGHT vis-a-vis a MANUFACTURED PRODUCT based upon search thereof in the United States Patent & Trademark Office.

**Y. NEW COVERED PRODUCTS** means MANUFACTURED PRODUCTS which have been offered for sale openly and notoriously in the relevant marketplace for a period of between two years and four years and unless waived by endorsement are the subject of a FAVORABLE INFRINGEMENT OPINION.

**Z. ESTABLISHED PRODUCTS** means MANUFACTURED PRODUCTS which have been offered for sale openly and notoriously in the relevant marketplace for a period of between two years and four years and unless waived by endorsement are the subject of a FAVORABLE INFRINGEMENT OPINION.

**AA. MATURE PRODUCTS** means MANUFACTURED PRODUCTS which have been offered for sale openly and notoriously in the relevant marketplace for more than four years.

## **II. INSURING AGREEMENTS**

### **A. Insurance coverage**

Subject to the deductibles, co-payments and limits of liability stated on the Declarations Page, the Company shall reimburse the Named Insured only for LITIGATION EXPENSE and DAMAGES for which the Named Insured is liable to a third party arising out of Covered LITIGATION, even if such COVERED LITIGATION is groundless, false or fraudulent. All reimbursement of LITIGATION EXPENSE and DAMAGES payable under this Policy shall be subject to all the terms, conditions, limitations, and exclusions stated herein. Reimbursements payable under this Policy will be made at periodic intervals, mutually agreeable to the Company and the Named Insured, based upon receipts for LITIGATION EXPENSES PAID BY Named Insured and, submitted to the Company during each period.

### **B. Territory**

The insurance provided under this Policy applies to COVERED LITIGATION that is brought in the United States of America, its territories or possessions.

### **C. Limits of Liability**

1. Subject to the Coinsurance Percentage shown on the Declarations Page, the Limits of Liability shown on the Declarations Page is the most that the Company shall pay for all LITIGATION EXPENSES and DAMAGES for:

a: any single CLAIM; or

b: all CLAIMS in the aggregate made during the POLICY PERIOD.

2. The inclusion herein of more than one Named Insured or the making of CLAIMS or the bringing of CIVIL PROCEEDINGS by more than one person or organization shall not operate to increase the Company's limit of liability. Two or more CLAIMS arising out of allegations of INFRINGEMENT or any series of related INFRINGEMENTS will be considered a single CLAIM. This policy shall apply only if the first such CIVIL or INJUNCTION PROCEEDINGS, which could be deemed COVERED LITIGATION, is begun during the POLICY PERIOD. These provisions apply regardless of the number of Named insured, patents, MANUFACTURED PRODUCTS, plaintiffs, defendants, or organizations that are involved in such CIVIL PROCEEDINGS.
3. The Company will not be obligated to continue to reimburse the Named Insured under this Policy after the applicable limit of the Company's liability has been exhausted by payment of LITIGATION EXPENSES and DAMAGES.

**D. Coinsurance**

The Named Insured shall be obligated to pay the percentage of coinsurance stated in Item 4 of the Declarations for all LITIGATION EXPENSE LITIGATION and DAMAGES, including DEFENSE EXPENSE of INVALIDITY COUNTERCLAIM and RE-EXAMINATION PROCEEDINGS, up to the Limits of Liability shown in the Declarations.

**E. The Named Insured**

The unqualified words "Named Insured" whenever used in this Policy means:

1. The individual, partnership, joint venture or corporation designated in Item 1. of the Declarations Page including any partner, member, executive officer, director of such designated entity solely while acting within the scope of their duties as such and only with respect to those MANUFACTURED PRODUCT(S) which such entity has manufactured, used, sold or offered for sale during the POLICY PERIOD or for

2. Any third party which an entity in 1. above has undertaken in writing, to indemnify for LITIGATION EXPENSES and DAMAGES arising out of PATENT/TRADEMARK or COPYRIGHT infringement proceedings where such third party: 1) is licensed under one or more of Insured's PATENTS, TRADEMARKS and/or COPYRIGHTS covering MANUFACTURED PRODUCT(S); and 2) such third party has manufactured, used, sold or offered for sale such MANUFACTURED PRODUCT(S) during the POLICY PERIOD, provided such third party and license were disclosed to the Company in the application for insurance under this Policy.
3. Any legal representative or trustee of the named Insured Listed in Item I above in the event of the Named Insured's incompetency, insolvency or bankruptcy.
4. No person or entity is an insured under this Policy with respect to the conduct of any current or past partnership or joint venture that is not named in Item 1. of the Declarations Page of this Policy.

### III EXCLUSIONS

- A. Coverage under this policy does not include:
1. Any liability of the Named Insured for fines, or penalties, including but not limited to punitive, exemplary, treble, or multiple damages of any kind.
  2. Any loss, cost or expense arising from BODILY INJURY or PROPERTY DAMAGE.
  3. The expense of any litigation or CIVIL PROCEEDING other than COVERED LITIGATION.
  4. Any costs, expenses or professional fees incurred by the Named Insured prior to the commencement of the COVERED LITIGATION.

5. Any LITIGATION EXPENSE or DAMAGES arising out of a CIVIL PROCEEDING where such CIVIL PROCEEDING was commenced prior to the beginning of the POLICY PERIOD whether or not the pleadings of such CIVIL PROCEEDING are amended subsequent to the beginning of the POLICY PERIOD to allege INFRINGEMENT.
6. Expenses and costs incurred by the Named Insured for salaries, expenses and/or fees of its officers, staff, in-house attorneys, directors, and employees.
7. Any liability arising from any criminal act or omission of Named Insured.
8. Willful INFRINGEMENT.
9. Expenses arising out of a CIVIL PROCEEDING alleging INFRINGEMENT where Named Insured has knowledge prior to the Effective Date of this Policy of any patents, trademarks, or applications for patents or trademarks which are or could be the basis for the allegation of INFRINGEMENT, or where the Named Insured knew or reasonably should have known that its manufacture, use, sale or offer for sale of a MANUFACTURED PRODUCT would result in it being charged with INFRINGEMENT.
10. Any amounts incurred in or arising out of the defense of any allegations of anti-trust or anti-competitive conduct or unfair trade practices.
11. Any Declaratory Actions of any nature whether Named Insured is Plaintiff or Defendant.
12. Any Administrative Proceeding of any nature including but not limited to International Trade Commission Proceedings. Except RE-EXAMINATION PROCEEDINGS.

13. For liability arising out of allegations of INFRINGEMENT of a MANUFACTURED PRODUCT which is the same as or substantially similar to a MANUFACTURED PRODUCT produced within the three years preceding the Effective Date of this Policy by any former employer of the Insured.
14. Any adjudicatory proceeding or part thereof by or against a Named Insured other than COVERED LITIGATION.
15. Any CIVIL PROCEEDING or part thereof by or against a Named Insured other than COVERED LITIGATION.
16. Any COVERED LITIGATION in which the Named Insured or any parent, subsidiary or affiliate of a Named Insured or any officer, director or holder of more than five percent(5%)of the stock of any of the foregoing has any direct or indirect interest in any recoveries, injunctions or the like arising from such COVERED LITIGATION.
17. Any loss based upon or arising out of any circumstances or activities likely to give rise to a CLAIM of which a Named Insured has knowledge at a time prior to the Effective Date of this Policy. This exclusion includes, but is not limited to, any prior CIVIL PROCEEDING or possible CIVIL PROCEEDING or circumstance referenced in the Named Insured's Application for this Policy. If, on the initial Effective Date of this Policy, Named Insured had/has any knowledge of any event or circumstance which he knows or could reasonably believe may result in a CIVIL PROCEEDING, LITIGATION EXPENSE and DAMAGES incurred in such CIVIL PROCEEDING will not be reimbursed by this Policy irrespective of when such CIVIL PROCEEDING is actually initiated.
18. Any CIVIL PROCEEDING alleging INFRINGEMENT by virtue of named Insured's breach or termination of any contract, license or agreement or suspension of performance thereunder.

19. Any claim made by any Named Insured under this Policy against any other Named Insured under this Policy.
20. Any loss based upon or arising out of discrimination by the Named Insured on the basis of race, creed, national origin, disability, age or sex, or sexual preference
21. Any loss based upon or arising out of the actual or threatened, discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, pollutants or contaminants into or upon the land, the atmosphere or any course or body of water, whether below or above ground. The intent and effect of this exclusion is to delete from any and all coverage afforded by this Policy any claim, judgment, liability, settlement, defense or expenses (including any loss, cost or expense arising out of any government cost, or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants) in any way arising out of such actual or threatened discharge, dispersal, release or escape, whether such results from the Insured's activities or the activities of others, and whether or not such is sudden or gradual, and whether or not such is accidental, intended, foreseeable, expected, fortuitous or inevitable, and wherever such occurs.
22. Any loss arising out of BODILY INJURY or PROPERTY DAMAGE as it relates to nuclear Energy:
  - a. With respect to which a Named Insured is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be a named Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

resulting from the “hazardous properties” of “nuclear material” and with respect to which(ii) the Named Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;

b. resulting from the “hazardous properties” of “nuclear material” if’:

(i) the “nuclear material” (a) is at any “nuclear facility” owned by the Named Insured or operated by the Named Insured or on the Named insured’s behalf, or(b) has been discharged or dispersed therefrom;

(ii) the “nuclear material” is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by the Named Insured or on the Named Insured’s behalf; or

(iii) the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by a Named Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any “nuclear facility” but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (iii) applies only to PROPERTY DAMAGE to such “nuclear facility” and any property thereat.

c. as used in this exclusion:

“hazardous properties” includes radioactive, toxic or explosive properties;

“nuclear material” means source material, special “nuclear material” or by-product material;

“source material” , special “nuclear material” and by-  
“product material” have the meanings given them by the Atomic Energy Act of 1954 or in any law amendatory the reef;

“spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or espoused to radiation in a “nuclear reactor”;

“waste” means any waste material (i) containing “by-product material” other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any are processed primarily for its “source material” content, and (ii\_ resulting from the operation by any person or organization and of a “nuclear facility” included under the first two paragraphs within the definition of “nuclear facility” below;

“nuclear facility” means:

- i. any “nuclear reactor”;
- ii. any equipment or device designed or used for (a) separating isotopes of uranium or plutonium, (b) processing or utilizing “spent fuel”, or (c) handling, processing or packaging “wastes.”

iii. any equipment or device used for the processing, fabricating, or alloying of special nuclear material” if at any time the total amount of such material in the custody of the Named Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

iv. any structure, basin, excavation, premises or place prepared or used of storage or disposal of “waste”;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

“macular reactor” means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

23. ASBESTOS Exclusion:

a. This insurance does not apply to ASBESTOS LIABILITY. This Policy does not cover any obligation on Named Insured’s part to indemnify any party for ASBESTOS LIABILITY; nor, to any ASBESTOS LIABILITY assumed under contract.

b. Any obligation or duty on Company’s part to investigate or indemnify CLAIMS or suits, does not apply to any loss, claim or suit directly or indirectly resulting from, caused by or alleged to be caused by, ASBESTOS or ASBESTOS LIABILITY.

24. Any work, word, slogan, dewing process, machine article of manufacture of composition of matter which has not yet been sold or on sale or which has been sold or on sale for less than two years except for NEW COVERED PRODUCTS listed on the Declarations Page.

**CONDITIONS****Company's Authorization of a CIVIL PROCEEDING to establish COVERED LITIGATION**

1. As a condition precedent to the Company's review of the Named Insured's CLAIM, the Named Insured shall:
  - a. Submit to the Company in writing a properly completed and executed "Infringement Defense Claim" form provided by the Company. The CLAIM shall include the PATENTS, TRADEMARKS or COPYRIGHTS involved, a brief statement of the nature of the action brought against the Named Insured and the expected result; an explanation of how and when the alleged INFRINGING acts occurred and when the possibility of being involved in a CIVIL PROCEEDING was first discovered by the Named Insured; and a projection quantifying the negative impact to the Named Insured if the action for INFRINGEMENT is successful.
  - b. Supply to the company, no later than sixty (60) days from the date of the initial request for authorization, or any extension of time granted by the Company, the following:
    - i. A current letter signed by independent, outside counsel chosen from a list of firms, such list of firms provided by the Company, who will not be selected as litigation counsel, setting forth the relevant claim or claims of the PATENT/TRADEMARK or COPYRIGHT alleged to be INFRINGED and rendering an opinion favorable to the Named Insured concerning the validity of the PATENT/TRADEMARK or COPYRIGHT

and/or INFRINGEMENT the reef, i.e. stating either there is no INFRINGEMENT or the PATENT/TRADEMARK or COPYRIGHT is invalid;

- ii A description of the Named Insured's MANUFACTURED PRODUCT(S), and the TRADEMARK, COPYRIGHT or in the case of a PATENT the claims which are alleged to be INFRINGED and whether the INFRINGEMENT is in the manufacture, wale, offer for sale, or use of the MANUFACTURED PRODUCT(S) or which, if any, combination thereof;
- iii identification of the Plaintiff. Together with all non-proprietary information Named Insured may have concerning such Plaintiff and a credit report, if available;
- iv identification of the Federal District court(s) having jurisdiction over the CIVIL PROCEEDING;
- v The Named Insured's preference for litigation counsel, provided that such counsel must be admitted to practice and a member in good standing in at least one state or federal judicial district. The Company, however, reserves the right to approve counsel.
- vi A budget projection for LITIGATION EXPENSE, including, but not limited to , proposed attorney's fee arrangements, and estimated costs and expenses for expert witnesses, collection of evidence and items of proof,

depositions, interrogatories, and discovery. The Company, however, reserves the right to approve the budget.

vii A statement of any other relevant facts and circumstances relating to each PATENT, TRADEMARK or COPYRIGHT CIVIL or INJUNCTIVE PROCEEDING;

viii A photostatic copy of the complete prosecution file maintained by the U.S. Patent Office and any summary or brief history of such file prepared by or on behalf of the insured relating to each PATENT or TRADEMARK if applicable.

2. The Company will accept CLAIMS submitted to it ninety (90) days after the beginning of the POLICY PERIOD, and thereafter during the POLICY PERIOD or, unless this Policy has been renewed or terminated, within ninety (90) days after the end of the POLICY PERIOD.
3. The Company shall promptly acknowledge receipt of all material submitted under Paragraph A.1. of this Article IV. The Company will, except as set forth in Paragraph A.4. below, as soon as practicable, after receipt of all material required under Paragraph A.1. of this Article IV, authorize the CIVIL or INJUNCTIVE PROCEEDING in whole or in part in writing to the named Insured whereupon such authorized whole or part shall become COVERED LITIGATION. The company's approval must be obtained in writing concerning the selection of litigation counsel and the budget for LITIGATION EXPENSE.

4. The Company may deny authorization of a CLAIM only under the following circumstances:
  - a. Fraud or material misrepresentation by the Named Insured.
  - b. Inability of the Named Insured to supply a favorable opinion letter from the independent outside counsel concerning validity and/or INFRINGEMENT as required in IV.A.1.b.i. above.
  - c. Disapproval by the Company of the litigation counsel, of the budget for LITIGATION EXPENSE. In the event of such disapproval, the choice of course and/or the budget, may be submitted to arbitration as provided in IV.D. below. The decision of the arbitrators as to appropriateness of counsel and/or reasonableness of the budget shall be binding on both parties.
  - d. The INFRINGEMENT CLAIM is not covered by the terms and conditions of this Policy.
5. The Insured must notify the party(s) bringing the CIVIL PROCEEDING within sixty (60) days after authorization of a CLAIM that the MANUFACTURED PRODUCTS being charged with INFRINGEMENT are Insured under a PATENT, TRADEMARK and COPYRIGHT Infringement Defense Cost Reimbursement Insurance Policy.
6. The Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM prior to and after authorization has been given by the Company. If authorization of a CLAIM has been given, the Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM, should the need arise, but only with the knowledge of the Named Insured and his litigation counsel.

**COMPANY'S RIGHT TO ASSUME NAMED INSURED'S DEFENSE**

The company shall have the right but not the duty to assume the defense of any COVERED LITIGATION against the Named Insured and, in such event, the Named Insured shall provide the Company with full cooperation and such information as the Company shall reasonably require. In the event the Company does not assume the defense of the named Insured, the Company shall, nevertheless, have the right to effectively associate with the Named Insured in court having jurisdiction. However, the arbitrators may not make binding decision concerning the validity of a PATENT, TRADEMARK or COPYRIGHT, or the INFRINGEMENT thereof.

4. The cost for Arbitration shall be shared equally between the Named Insured and the Company

**Recovery of Costs**

In the event that any COVERED LITIGATION results in the Named Insured receiving:

1. RECOVERED COSTS, such recovery shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE; and/or
2. an award, if any, of court costs and/or attorneys' fees, the same shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE; provided that, in no event shall the Company be entitled to recover, under the above Provision 1 and this Provision 2 combined, a sum greater than the total of all its payments in respect to the COVERED LITIGATION.

**Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all the Named Insured's rights of recovery therefor against any person or organization, and the Named Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for the Company. The Named Insured shall do nothing to prejudice such rights either before or after a CLAIM. Any amount recovered in excess of the Company's total payment shall be restored to the Named Insured, less the cost to the company of recovery.

**Termination of Coverage**

1. **Cancellation by Named Insured:**

This Policy may be cancelled at any time by Named Insured upon prior written notice to the Company stating the effective date of cancellation and return of the Policy to the Company.
2. **Cancellation by the Company**

This Policy may be cancelled by the Company at any time by the giving of not less than thirty (30) days' written notice to the Named Insured at the last known address, provided, however, that not less than ten (10) days' written notice shall be given for non-payment of premium.
3. **Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.**
4. **If the Company cancels, earned premium shall be computed pro rata. If the Named Insured cancels, earned premium shall be computed in accordance with customary short rate table and procedures.**
5. **In the event that this Policy is cancelled in accordance with any of the foregoing provisions of this Section, such cancellation shall not terminate the Company's obligation to continue to reimburse the Named Insured for LITIGATION EXPENSE and DAMAGES incurred in respect of any COVERED LITIGATION which is proceeding under the Policy at the time of cancellation; moreover, such cancellation shall not affect the Company's right to Recovery of costs, as provided in Section IV.E. the defense and settlement of any Claim that appears reasonably likely to involve the Company, including, but not limited to, exercising the right to effectively and meaningfully associate in the negotiation of a settlement.**

The Company shall have no obligation to reimburse the Named Insured for LITIGATION EXPENSES or to continue the defense (if the

Company has assumed the defense) of the Named Insured after the then remaining applicable limit of indemnity has been exhausted.

The Named insured shall not admit liability for or settle any COVERED LITIGATION, stipulate to any judgment without the Company's prior written consent, which consent shall not be unreasonably withheld.

If the Named Insured refuses or fails, within 30 days of mailing or delivering by the Company to the Named Insured of a written recommendation from the Company, to consent to any settlement recommended by the Company and acceptable to the claimant, then:

1. The Company may withdraw from the defense of the Named Insured (if it has assumed the defense) by tendering control of the defense to the Named Insured, and the Named Insured shall thereafter, at its own expense, negotiate or defend such CLAIM independently of the Company; and
2. The Company's liability shall not exceed the smaller of (i) the then remaining applicable limit of indemnity, or (ii) the amount for which the CLAIM could have been settled if such recommendation had been consented to, plus LITIGATION EXPENSES incurred by the Company, and LITIGATION EXPENSES incurred by the Named Insured prior to the date of such refusal.

#### **False and Fraudulent Claims**

If the Named Insured shall submit any CLAIM knowing the same to be false or fraudulent, this Policy shall become void and all insurance hereunder shall be forfeited.

**Cooperation of Named Insured**

Throughout the course of any COVERED LITIGATION, the Named Insured shall fully cooperate with the Company in providing full information concerning the conduct of COVERED LITIGATION, including the selection and briefing of counsel, choice of forum, if any, the general and specific conduct of COVERED LITIGATION, and any in or out of court settlement negotiations. Named Insured shall cooperate with Company in providing other documents and material as Company may request from time to time. However, Named Insured need not supply documents and other materials requested by the Company if doing so would adversely effect the out come of the COVERED LITIGATION and provided litigation counsel can certify that the with holding of such documents and/or material will not cause irreparable injury to the Company.

**Arbitration**

1. Any dispute between the Named Insured and the Company arising out of this Policy shall be promptly referred to arbitration for final determination.
2. Matters referred to arbitration under this Policy shall be heard by a panel of three arbitrators, which shall be selected as follows: The Company and the named Insured shall each select one arbitrator, and the two arbitrators together shall select the third arbitrator. For any dispute arising out of Article IV, Part A, at least two of the three arbitrators shall be admitted to practice before the U.S. Patent and Trademark Office.
3. The decision, in writing, of the arbitrators, when filed with the parties, shall be final and binding on both parties. Judgment upon the arbitration award may be entered in any

**Minimum Earned Premium**

The minimum earned premium for this policy is twenty percent (20%) of the premium stated in Item 3 of the Declarations and is not subject to short rate of pro rata adjustment in the event of cancellation by the Named Insured. In the case of multiple year premium. Cancellation for nonpayment of premium after the effective date of this policy shall be deemed a request by the Named insured for cancellation of this policy, thereby activating the foregoing minimum earned premium provision.

**Transfer or Assignment**

This insurance provided under this Policy shall apply only as excess insurance over any other valid and collectible insurance available to the Named Insured unless such other insurance specifically applies as excess insurance over the Limits of Liability provided herein.

In the event any other insurer or Indemnitor, including but not limited to, any Professional Liability Insurer or any General Liability Insurer, denies coverage of indemnification as the case may be for any reason whatsoever for an INFRINGEMENT which may be covered under a policy issued by such Insurer and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason for such denial as stated by such other insurer. As a condition precedent to making a CLAIM under this Policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against said other insurer to determine by final judgment the legality of its position. If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with the prior approval of the Company shall be considered LITIGATION EXPENSE.

**Excess Indemnity**

The insurance provided under this policy shall also apply only as excess indemnification over any other indemnification available to the Named Insured from whatever source. In the event any Indemnitor denies any indemnification for any reason whatsoever for an INFRINGEMENT which may be covered under an indemnification provision of an agreement between itself and Named Insured and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason of such denial as stated by the Indemnitor. As a condition precedent to making a claim under this policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against the said Indemnitor to determine by final judgment the legality of its position. If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with prior approval of the Company shall be considered Litigation Expense.

**Conformity to Statute**

In the event that any terms of this Policy are found to be in conflict with any terms mandated by the statutes of the jurisdiction in which this Policy is issued, such terms shall be deemed to be reformed to conform with those mandatory statutes. The provisions of this Policy are severable, and the voiding of any provision or provisions.

**Extended Reporting Period**

1. If the Company cancels this Policy for any reason other than for non-payment of premium or refuses to renew it, the Named insured shall have the right to an Extended Reporting Period for CIVIL PROCEEDINGS commenced against the Named Insured during such Extended Reporting Period for any INFRINGEMENT on or after the Effective Date stated in the Declarations Page of this Policy and before the end of the POLICY PERIOD which is and otherwise would be covered by this Policy.

2. If the Named Insured makes a written request to the Company and pays the additional premium for and Extended Reporting Period Endorsement within thirty (30) days after the end of the POLICY PERIOD, the Extended Reporting Period will be twelve (12) months from the Effective Date of cancellation or non-renewal of this Policy. The additional premium shall be 125% of the last whole annual premium for this Policy, and shall be fully earned upon the Effective Date of the Endorsement. The Extended Reporting Period Endorsement shall not be cancelled.
3. The Limits of Liability that remain at the end of the POLICY PERIOD after reimbursement of all LITIGATION EXPENSE during the POLICY PERIOD are not reinstated, renewed or increased for CLAIMS first made or brought during the Extended Reporting Period. Any CLAIM first made or brought during the Extended Reporting Period will be deemed to have been first made on the last POLICY PERIOD.

IN WITNES WHEREOF. The Company has caused this Policy and the forms and endorsements attached thereto to be executed according to law.

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Secretary

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President

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## **LLOYD COMPANY IN UNITED KINGDOM**

### **INTELLECTUAL PROPERTY RIGHTS LEGAL EXPENSES INSURANCE**

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## **1. INFORMATION FOR INSUREDS**

The Insured is requested to read this Certificate of Insurance and, if it is incorrect, return it immediately for alteration. If you have any queries regarding this insurance, please telephone

### **Please note:**

Words in the singular include the plural and words in the plural include the singular.  
Words in the masculine include the feminine

## **2. THIS IS A CLAIMS MADE INSURANCE**

This Insurance only covers claims first made to Underwriters during the Period of Insurance.

## **3. BASIS OF CONTRACT CLAUSE**

Underwriters have received a signed and dated proposal form. It is hereby agreed that the Proposal Form, together with all supporting and associated information supplied by or on behalf of the Insured, form the basis of this Insurance and are to be incorporated in this Contract of Insurance.

## **4. PREMIUM**

The premium is set out in the Schedule. Receipt of the premium by Underwriters is a condition precedent to their liability under this Insurance.

## **5. DEFINITIONS**

In this Insurance, except where the context otherwise requires, the following words shall have the meanings set out below.

(a) "Appointed Representative" means a registered patent attorney or any other appropriately qualified person in intellectual property law appointed to act in a professional capacity for the Insured in accordance with the terms of this Insurance.

(b) "Claim" means a notification to Underwriters of a circumstance giving rise to indemnity under this Insurance. All claims which, in Underwriters' opinion, arise directly or indirectly out of the same cause or from a single event shall be regarded as one claim under this Insurance.

(c) "Co-insurance Proportion" means the percentage of Legal Expenses specified in the schedule, which the Insured shall pay after any Excess is paid under this Insurance as Legal Expenses are incurred.

(d) "Declared Intellectual Property Rights" means and is limited to any patent, copyright (copyright being three dimensional objects specifically industrial objects only), plant variety rights sometimes called plant breeders' rights, registered design, or registered trade mark (including trade marks for both goods and services, the Nominated Registered Patent Attorney has drafted, effected or reviewed and has reported on in the Status Report confirming that the Insured has unequivocal rights thereto, all of which intellectual property rights are listed in the Schedule.

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(e) "Excess" means the amount of Legal Expenses shown in the Schedule for which the Insured is responsible under this Insurance in respect of any one Claim.

(f) "Insured" means the individual, company, partner, firm or organization named in the Schedule and in whom the Declared Intellectual Property Rights are vested through ownership.

- (g) "Legal Expenses" means:
- (i) any fees, expenses and other disbursements reasonably incurred by the Insured in connection with any claim or legal proceedings covered under this Insurance, as well as those incurred by Underwriters, including costs and expenses of expert witnesses and
  - (ii) any costs of another party to a claim or legal proceedings covered by this Insurance payable by the Insured following an award of costs by any court and any such costs payable following a settlement made with the written consent of Underwriters.

Where the insured is registered for any Goods and Services Taxes, Underwriters will not pay any Goods and Services taxes which the Insured may recover, the payment by the Insured of such recoverable and applicable Goods and Services Taxes shall be additional to and not part of the Excess.

(h) "Limit of Indemnity" means the maximum limit of Underwriters' liability to indemnify the Insured for Legal Expenses as stated in the Schedule. This limit of indemnity will apply to the aggregate of all claims made during the Period of Insurance stated in the Schedule.

(i) "Nominated Registered Patent Attorney" means the company named in the Schedule under instruction to act on behalf of the Insured in acquiring and reviewing the Insured's intellectual property rights.

(j) "Period of Insurance" means the period of time specified in the Schedule.

(k) "Status Report" means the report with the date specified in the Schedule that lists the Declared Intellectual Property Rights evaluated by the Nominated Registered Patent Attorney and submitted to Underwriters including any supplementary reports submitted during the Period of Insurance.

- 1) "Territorial Limits" means the territory as stated in the Schedule.

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## **6. INSURING CLAUSES**

### **SECTION A : ENFORCING AND PROTECTING YOUR DECLARED INTELLECTUAL PROPERTY RIGHTS**

Underwriters agree to indemnify the Insured against Legal Expenses which the Insured has incurred with Underwriters' written consent within the Territorial Limits and during the Period of Insurance in the pursuit by the Insured of any claim or legal proceedings in the common Courts arising

from: -

- 1) the infringement, or alleged infringement, of a Declared Intellectual Property right.
- 2) an application to amend a Declared Intellectual Property Right in proceedings in which the validity of the Declared Intellectual Property Right is put in issue.

#### **SPECIFIC EXCLUSIONS TO SECTION A.**

**Section A will not cover: -**

- 1) any proceedings other than proceedings originating in [ ] and the common courts in the Territorial Limits or otherwise subject to Underwriters' discretion;
- 2) proceedings between co-proprietors of a Declared Intellectual Property Right.

**SECTION B : DEFENDING YOUR POSITION AGAINST ALLEGATIONS OR  
INFRINGEMENT**

Underwriters agree to indemnify the Insured against Legal Expenses which the Insured has incurred with Underwriters' written consent within the Territorial Limits and during the Period of Insurance in the defense of any claim or legal proceedings in the common Courts arising from;

1) alleged infringement by the Insured of another person's intellectual property rights by the exercise of the Declared Intellectual Property Rights;

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2) an application to amend, cancel, revoke or have declared invalid a Declared Intellectual Property Right.

In respect of 1) above cover shall be subject to the Status Report including an infringement search conducted or confirmed by the Nominated registered Patent Attorney.

**SPECIFIC EXCLUSIONS TO SECTION B**

**Section B will not cover : -**

1) any proceedings other than proceedings originating in [ ] and the common courts in the Territorial Limits or otherwise subject to Underwriters' discretion;

2) proceedings between co-proprietors of a Declared Intellectual Property Right.

**7. GENERAL EXCLUSIONS**

Underwriters will not be liable for:

(a) The pursuit or defence of any claim or legal proceedings, where the Insured has acted in deliberate or reckless disregard of his own or any other person's intellectual property

rights or where the Insured has deliberately or recklessly caused a claim under this Insurance or where the Insured has acted in flagrant breach of another person's intellectual property rights;

(b) Any claim caused or contributed to by any dishonest, fraudulent, criminal or malicious act or omission by the Insured;

(c) Any criminal proceedings;

(d) Any action in respect of Passing Off;

(e) Proceedings by or against the Crown, or any national or local Government Department or Regulatory Agency or any overseas government or Regulatory Agency or for the infringement or alleged infringement by the Crown, the Government Department or Regulatory Agency of a Declared Intellectual Property Right;

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(f) The amount of the Excess and Co – insurance Proportion;

(g) Legal Expenses incurred before Underwriters' written consent has been given;

(h) Any claim or legal proceedings in respect of which the Insured is or, but for the existence of this Insurance, would be entitled to indemnity under any other insurance policy;

(i) Any Legal Expenses in respect of any claim or legal proceedings where the Insured is entitled under any other policy of insurance to indemnity in respect of the damages payable in such legal proceedings;

(j) Any act, omission or dispute occurring before, or existing at the start of, the Period of Insurance which the Insured knew or ought reasonably to have known was likely to give rise to a claim or legal proceedings by against the Insured;

(k) The pursuit or defense of any action alleging libel, slander, defamation, malicious falsehood, slander of goods or any similar tort;

(l) Proceedings relating to the acquisition or renewal of an intellectual property right;

(m) Any loss or expense whatsoever resulting or arising from or caused by;

(i) Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

(ii) The radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(n) Any legal liability of whatever sort directly or by indirectly caused or contributed to by or arising from seepage, pollution or contamination of any kind;

(o) Any legal proceedings brought in countries other than those claim or specified in the Territorial Limits or which relate to intellectual property rights outside the Territorial Limits or which are brought under the laws of countries outside the Territorial Limits, or any claim or legal proceedings, wherever brought, for the enforcement of any judgment obtained outside the Territorial Limits or under the laws of countries outside the Territorial Limits;

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(p) Any claim or legal proceedings for damages in connection with any moral rights or the foreign or European Union equivalent thereof;

(q) Any Legal Expenses payable or increased or which cannot be recovered by reason of the insolvency of the Insured or of any third party;

(r) Any witness costs and expenses incurred by or in respect of any person who at the date when the costs or expenses are incurred is an employee, agent, director or officer of the Insured or any subsidiary, associated or holding company of the Insured;

(s) Any claim or legal proceedings relating to any intellectual property not declared by the Insured and specified in the Schedule;

(t) The technical or routine treatment, preparation, registration or collation of Insured Intellectual Property Rights or monitoring for infringement thereof which the Insured ought and specifically reasonably to carry out not occasioned by any claim or legal proceedings insured hereunder or matters which go beyond the immediate scope of the claim or legal proceedings;

- (u) Any claim or legal proceedings arising from :
  - (i) Bodily injury, illness, disease or death
  - (ii) Loss, destruction or damage to property
  - (iii) Alleged breach of any professional duty
  - (iv) Alleged breach of any duty owed as a director or officer of the Insured
  - (v) War, invasion, act of foreign enemy, hostilities (whether war be declared or Ont.), civil war, rebellion, revolution, insurrection or military or usurped power, terrorism, strikes, lock-outs or worker occupations;
- (v) The payment of any damages; Underwriters shall be liable only for the payment of Legal Expenses (as defined above).
- (w) Any claim in connection with a Domain name of the Insured or another party.

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## 8. CLAIMS CONDITIONS

(a) The Insured must comply strictly with the terms, conditions, limitations and exclusions of the Insurance. Strict compliance by the Insured with the terms, conditions, limitations and exclusions is a condition precedent to any liability of Underwriters to make any payment hereunder.

(b) Underwriters must be notified in writing immediately the Insured becomes aware of any actual or alleged act, omission, dispute or other event which has given or may give rise to a claim or legal proceedings involving the Insured. Such notification of a claim by the Insured shall be made on behalf of the Insured by the Nominated Registered Patent Attorney who will advise Underwriters of the details of the claim. If the Insured fails to notify Underwriters immediately of such an act, omission, dispute, or other event during the Period of insurance any claim arising from that act, omission, dispute or other event will not be covered.

Where such notification has been given, Underwriters will treat any subsequent claim or legal proceedings in respect of the circumstances notified as though the claim or legal proceedings had been made or brought during the period of Insurance.

(c) Once a claim has been received, Underwriters will require the Insured to confirm when it first became aware of the threat of or risk of a claim. Should it become clear at any time during the claim or legal proceedings that the Insured knew before the beginning of the Period of Insurance of the threat or risk of a claim, Underwriters will be entitled to withdraw consent and reclaim from the Insured legal Expenses already paid.

(d) Underwriters will not be liable to indemnify any legal Expenses until they have investigated the claim and until they have given their written consent to the Insured to such Legal Expenses being incurred.

(e) Underwriters will consent to indemnify legal Expenses if they decide that:

(1) there are reasonable chances of success in pursuing or defending the claim or legal proceeding; and

(2) it is commercially reasonable for Legal Expenses to be incurred in the overall circumstances of the claim; and

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(3) a reasonable or rational uninsured person would have incurred those Legal Expenses.

Prior to making such determination, the Nominated Registered Patent Attorney must furnish Underwriters with the following:

An opinion by the Nominated Registered Patent Attorney, or at the request of Underwriters an opinion signed by independent outside counsel who has not participated in the prosecution of the Declared Intellectual Property Rights, which sets for the following:

- (i) An opinion on whether the Declared Intellectual Property Rights are valid and enforceable and
  - (ii) An opinion on whether the Declared Intellectual Property Rights are actually being infringed; and
  - (iii) An opinion on merits of litigation for infringement or Alternative Dispute Resolution if recommended. In this instance, Alternative Dispute Resolution shall be deemed to include any form of conciliatory or dispute resolution proceedings; and
  - (iv) An estimate of how much the proceedings will cost to bring the matter to conclusion; and
  - (v) An estimate of the financial loss caused or likely to be caused to the Insured by the breach of the Declared Intellectual Property Rights.
- (f) Underwriters reserve the right to withdraw their consent to cover Legal Expenses during the course of the claim or legal proceedings. They will do so if:
- (1) there are no longer reasonable chances of success in pursuing or defending the claim or legal proceedings; or
  - (2) it is no longer commercially reasonable for Legal Expenses to be incurred in the overall circumstances of the claim or legal proceeding; or
  - (3) a reasonable or rational uninsured person would no longer continue to incur those Legal Expenses; or
  - (4) an offer of settlement or Part 36 offer/payment has been made which Underwriters reasonably believe should be accepted.

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Legal Expenses incurred by the Insured after the withdrawal of Underwriters' consent will not be paid by Underwriters.

(g) Conduct of Legal Proceedings

**(i) Freedom to Choose Appointed Representative**

The Insured is free to choose as the Appointed Representative either the Nominated Registered Patent Attorney or a person or firm from Underwriters' panel of Solicitors appropriately qualified in intellectual property law to act in any legal proceedings to which Underwriters have given their consent. The name and address of the Appointed Representative selected must be notified to Underwriters on appointment. In all cases the Appointed Representative shall be appointed in the name and on behalf of the Insured. In choosing the Appointed Representative, the Insured must have regard to its duty to minimize the costs of any claim or legal proceedings. The Insured shall not change the Appointed Representative without Underwriters' prior written agreement.

**(ii) All information to be given to the Appointed Representative**

The insured must promptly give the Appointed Representative all information and assistance required. This must include a complete and truthful account of the facts of the case and all relevant documentary or other evidence in the Insured's possession. The Insured must promptly obtain or execute all documents as necessary and attend any meetings or conferences when requested.

**(iii) Appointed Representative's Undertaking**

The Insured must before any Appointed Representative is appointed obtain from them an undertaking addressed to Underwriters that they will immediately inform Underwriters of the discovery of any fact or evidence or other matter materially affecting the Insured's chances of success in the claim or legal proceedings or the prospect of any Judgment in the claim or legal proceedings being successfully enforced or the likely costs of the claim or legal proceedings and that the Appointed Representative will supply Underwriters with any information, document or advice

Underwriters may require about the claim or legal proceeding whether or not such information or document is privileged.

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**(iv) Access to the Appointed Representative**

Underwriters are entitled to obtain from the Appointed Representative any information, document or advice relating to a claim or legal proceedings, whether or not privileged. On request the Insured will give any instructions necessary to ensure such access.

If the Appointed Representative refuses to grant such access because in doing so the Insured's interest in the conduct of the legal proceedings may be prejudiced, no further Legal Expenses will be paid.

- (v)** The Insured must not, without Underwriters written consent, enter into any agreement with the Appointed Representative as to the payment of Legal Expenses.

**(vi) Bills of Costs**

All bills of costs relating to any claim or legal proceedings which the Insured receives from the Appointed Representative must be forwarded to Underwriters without delay. If requested by Underwriters, the insured must ask the Appointed Representative to submit their bills of costs for detailed assessment of costs or certification by the law Society, court or other professional body as appropriate. If requested by Underwriters, the Insured must require an opposing party to tax any costs ordered against the Insured and cooperate in that detailed assessment of costs.

**(vii) Instruction of Counsel or Expert Witnesses**

If in the course of any claim or legal proceedings the Appointed representative wishes to instruct Counsel, Leading counsel or any expert witness, the name of such Counsel or expert witness must be submitted to

Underwriters, together with an explanation of the necessity for such action. Underwriters will not withhold their consent to the instruction of specialist Counsel or appropriate expert witnesses, provided it is both necessary and commercially reasonable.

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The Insured must inform Underwriters in writing as soon as an offer to settle a claim or legal proceedings is received, or Part 36 offer/payment is made. The Insured must not make any offer to settle or enter into any agreement to settle without Underwriters' prior written consent. The Insured must not make any admission of liability without Underwriters prior written consent. This condition shall continue in full force at all times in respect of any claim or legal proceedings in which any payment of legal Expenses has been made by Underwriters, including after the exhaustion of the Limit of Indemnity.

**(ix) Appeals**

In the event that the Insured wishes to appeal against any decision given in any legal proceedings, the Insured must seek Underwriters' written consent. Any application for such consent must be accompanied by the advice of the Appointed Representative on the merits of the proposed appeal. Underwriters will decide whether to give consent for an appeal having regard to the criteria set out in Claims Conditions(e) and(f) above. The Insured must co-operate in bringing any appeal if Underwriters so require.

**(x) Payment of Legal Expenses**

Although the Insured is responsible for payment of all Legal Expenses Underwriters will settle these direct (subject to payment by the Insured of the Excess, Coinsurance Proportion and any goods and services taxes

applicable and recoverable) if requested provided that the bills are certified to the effect that such charges have been properly incurred and that Underwriters are authorized to settle a the Insured's behalf.

**(xi) Recovery of costs**

In all cases where any claim or legal proceedings are settled in favor of the Insured, the Insured shall seek to recover a proper proportion of Legal Expenses already paid and Underwriters shall have a lien on any damages recoverable for the Legal Expenses paid or payable under this Insurance.

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**(xii) Conduct of Proceedings**

The Insured shall conduct all legal proceedings with the same care and economy as if it had not been insured. The Insured shall comply with all Rules of Court and orders made by the Court and shall follow all reasonable advice given by the Appointed representative.

- (h) The Insured must take all reasonable measures to minimize the cost of claims or legal proceedings, including in appropriate cases commencing proceedings in or applying for transfer to the common courts.
- (i) Any dispute between the Insured and Underwriters (including a dispute as to whether Underwriters should consent to pay Legal Expenses) shall be referred to a single arbitrator who shall be either a barrister and solicitor or a barrister agreed upon by both parties or failing agreement one who is nominated by the President of the Law Society.
- (j) If the Insured makes any request for payment under this Insurance knowing it to be fraudulent or false in any respect or in circumstances where the Insured ought reasonably to have known it was fraudulent or false, or where there is collusion between the parties to the dispute, this Insurance shall become void and any claims and premiums paid hereunder shall be forfeited.

- (k) If the insured becomes insolvent during the course of any claim or legal proceeding, Underwriters' liability for Legal Expenses already incurred.
- (l) If the Insured enters into a premium financing arrangement with any bank or finance company or a provider of such services, for the payment of premium for this Insurance and provided underwriters have received the full premium for the Insurance, the Insured hereby agrees that if the insured fails to make the necessary premium installments to the bank or finance company, such bank or finance company is authorized to cancel the Insurance on behalf of the Insured. Upon such conciliation, and provided no claims have been made or notified Underwriters shall refund pro-rata premium from the date of cancellation to the bank or finance company. Upon such payment this Insurance shall be cancelled and all rights of the Insured Hereunder forfeited.

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Other proceedings which are partly covered under this Insurance but where the proceeding include a cause(s) of action which is not covered by the terms of this Insurance( whether as a result of the Insuring Clause or the Exclusions) cover will be afforded in respect of the Claim, but the amount payable by Underwriters (subject always to the Limit of Indemnity, Excess and co-Insurance Proportion) will be reduced by the amount which it is determined by agreement between the insured and Underwriters represents the proportion applicable to the cause(s) of action not covered by the terms o this insurance. In default of agreement, such proportion shall be determined by an arbitrator appointed by the President of the Law Society.

Notwithstanding the foregoing, where a claim for Passing Off is incidental to an action for infringement of a registered trademark, Underwriters will (subject otherwise to all the terms, conditions and exclusions of this insurance) pay all the costs of the legal or other proceedings.

## **9. LIMITS OF INDEMNITY, EXCESS AND CO-INSURANCE**

(a) The total amount of indemnity provided under this Insurance during the Period of Insurance shall not exceed the Limit of Indemnity specified in the Schedule.

(b) The amount of Excess to be borne by the Insured is specified in item 8 of the Schedule and underwriters shall only be liable for Legal Expenses in excess of that amount, and after further deduction of the Co-insurance Proportion specified in the Schedule, which shall be paid by the Insured in addition to the Excess.

(c) The Insured hereby warrant that they will not take out any other insurance in respect of the Excess or the Co-insurance proportion without Underwriters' prior written consent.

## **10. GOVERNING LAW AND JURISDICTION**

This Contract of Insurance will be governed by the laws of United Kingdom

## **11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 CLARIFICATION CLAUSE**

A person who is not a party to this Certificate has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Certificate, but this does not effect any right or remedy of a third party which exists or is available apart from that act.

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## 12. SERVICE OF SUIT

The Underwriters hereon agree that:-

- (i) In the event of a dispute arising under this insurance, Underwriters at the request or the insured will submit to the jurisdiction of any competent court in the Commonwealth of United Kingdom. Such dispute shall be determined in accordance with the law and practice applicable in such court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon

Lloyd's General Representative in United Kingdom

Who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the Insured to give an written undertaking to the insured that he will enter an appearance on underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such court or any competent Appellate court.

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### SCHEDULE AND CERTIFICATE

This is to certify that in accordance with the authorization granted under contract No. 501/IBXXXXXX to the undersigned by certain Underwriters at Lloyd's, whose names and proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the contract which bears the seal of Lloyd's Policy Signing Office and in consideration of the premium specified below, the said Underwriters are hereby bound, each for his own part and not one for another, their

Heirs, Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

1. 1. Certificate No:
2. 2. The Insured:
3. 3. Address:
4. 4. Business Activity:
5. 5. Declared Intellectual Property Rights:
6. 6. Period of Insurance:
7. 7. Limit of Indemnity:
8. 8. Excess:
9. 9. Co – insurance Proportion:
10. 10. Territorial Limits:
11. 11. Premium:
12. 12. Proposal Form Dated:
13. 13. Status Report Dated:
14. 14. Nominated Registered Patent Attorney or any other appropriately qualified

person in intellectual property

law: **Dated** in London

the day of 200

Signed:

INSURANCECOEPYLD Corporate Authorized Representative No 269649, Licensee:  
Insurance Advisory HICTT