



VCS INSURANCE COMPANY LIMITED

**Trustees, directors and officers (TDO) insurance for
independent advice organisations**

TABLE OF CONTENTS

1	SCHEDULE	3
2	INSURING CLAUSES	4
3	DEFINITIONS	4
4	LIMIT OF INDEMNITY	6
5	DEDUCTIBLE	6
6	EXTENSIONS	6
7	EXCLUSIONS	8
8	CONDITIONS	9
9	INTERPRETATION	11
10	GOVERNING LAW AND DISPUTES	12
11	POLICYHOLDER COMPLAINTS	12

The **Insured** has submitted to the **Insurer** the **Proposal** and declarations which it is agreed shall be the basis of, and be incorporated into, this policy and in consideration of the **Premium** paid or to be paid by the **Insured**, the **Insurer** will indemnify the **Insured**, subject to the terms, conditions, exclusions, exceptions and limitations of this policy.

For full details of the schedule please refer to the Certificate of Insurance that has been issued once insurance has been effected.

1. SCHEDULE

Policy Number:

1) Insured:

2) Insured's Address:

3) Insured's Business:

4) Period of Insurance: **1st April 2012**
From: **31st March 2013**
To:
both days inclusive

5) Limit of Indemnity: GBP
in the aggregate, within and as part of which there shall be sub-limits as follows:

- (a) 100% of limit of indemnity in the aggregate under Clause 2.2.c. (**Investigation Costs and Expenses**)
- (b) 100% of limit of indemnity under Clause 2.2.d. (**Criminal Defence Costs and Expenses**)
- (c) 50% of limit of indemnity under Clause 2.2.e. (**Pollution and Contamination Defence Costs and Expenses**)
- (d) 25% of limit of indemnity under Clause 6.4 (Retirement Run-off)

6) Deductible: As per **Certificate** of insurance

7) Premium: GBP plus GBP Insurance **Premium Tax (IPT)**
Total: GBP

8) (a) Jurisdiction:

(b) Territorial Limits:

9) Prior and Pending Litigation Date (Clause 7.2):

10) Date of Proposal:

11) Endorsements:

Signed:

On behalf of VCS Insurance Company Limited

TDO - 2013/14

2. INSURING CLAUSES

2.1. The **Insurer** will pay on behalf of:

- 2.1.a. the **Insured** all **Loss** that the **Insured** is legally liable to pay;
- 2.1.b. the **Company** any such **Loss** that the **Company** is legally required or permitted to pay the **Insured** as advancement or indemnity under any applicable **Company** law or agreement; for a **Claim** against the **Insured** for a **Wrongful Act** provided that the **Claim** is first made against the **Insured** during the **Period of Insurance** or **Discovery Period** if applicable.

2.2. The **Insurer** will pay on behalf of the **Insured**:

- 2.2.a. **Defence Costs and Expenses** in the defence, **Investigation** or settlement of any **Claim** which fails to be dealt with under insuring clause 2.1;
- 2.2.b. **Defence Costs and Expenses** in the **Investigation** of any circumstance(s) **Notified** to the **Insurer** under condition 7.3 which is (or are) likely to give rise to a **Claim**;
- 2.2.c. **Investigation Costs and Expenses**;
- 2.2.d. **Criminal Defence Costs and Expenses**; and
- 2.2.e. **Pollution and Contamination Defence Costs and Expenses**.

3. DEFINITIONS

- 3.1. "**Advice Organisation**" means any organisation (charity, association, **Company**, firm or limited liability partnership) that offers advice, counselling, mediation and advocacy services on social welfare matters including immigration or specialist support and consultancy services to such organisations, their funders and commissioners.
- 3.2. "**Claim**" means any demand made of, or allegation of a right against, the **Insured** which is communicated to the **Insured**. All **Claims** related or connected in any way by reference to any common contributory factor or characteristic shall be treated as a single **Claim** first made on the date the first such **Claim** was **Notified**.
- 3.3. "**Company**" means the **Company**/companies stated in the **Certificate** and its/their Subsidiaries.
- 3.4. "**Criminal Defence Costs and Expenses**" means in relation to any **Claim** for bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person, **Defence Costs and Expenses** in any criminal proceedings or **Investigation** under Health and Safety at Work legislation including corporate manslaughter or the equivalent in any jurisdiction.
- 3.5. "**Defence Costs and Expenses**" means legal costs and expenses incurred by or on behalf of the **Insured** with the prior written and continuing consent of the **Insurer** (such consent not to be unreasonably withheld). It does not include any **Insured's** or the **Company's** own costs and expenses (including salaries) or any value attributable to the time spent by the **Insured**, **Company** or any **Employee** in dealing with a **Claim**.
- 3.6. "**Discovery Period**" means any period of up to twelve months by which in respect of **Wrongful Acts** committed prior to the expiry of the **Period of Insurance** the **Insurer** extends cover. The limit of indemnity for the **Period of Insurance** and **Discovery Period** combined shall not exceed the sum stated in the **Certificate**.
- 3.7. "**Employee**" and "**Employment**" means any person, other than a director or officer of the **Company**, who is under a contract or service or apprenticeship, supplied to, hired, or borrowed by the **Company**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Company**.
- 3.8. "**Insured**" means:

- 3.8.a. any natural person except an external auditor who is a past, present or future trustee, director or officer of the **Company**, or holds any equivalent position in any jurisdiction;
- 3.8.b. any past, present or future **Employee** of the **Company**:
- 3.8.b.1. acting at the specific prior written request of the **Company** in the capacity of Outside Director; or
- 3.8.b.2. acting in any managerial or supervisory capacity; or
- 3.8.b.3. named as co-defendant with any trustee, director or officer.
- 3.8.c. any trustee, director or officer's lawful spouse where in receipt of a **Claim** because of the Wrongful Act of the trustee, director or officer.
- 3.8.d. the trustee, director or officer's estate, heirs, legal representatives or assigns. For the avoidance of doubt, all references to trustees, directors and officers apply equally to non-executive and executive directors.
- 3.9. "**Insurer**" means VCS Insurance **Company** Limited, an incorporation under number 44303 in accordance with The Companies (Guernsey) Law 2008, and is a licensed **Insurer** registered with the Guernsey Financial Services Commission under the Insurance Business (Bailiwick of Guernsey) Law 2002. Registered address: Second Floor, St Andrews House, Le Bordage, St Peter Port, Guernsey, GY1 1BR.
- 3.10. "**Investigation**" means any formal **Investigation** enquiry or request for information of or attendance by the **Insured** initiated by anybody (including the Financial Services Authority) other than the **Company** authorised so to compel the **Insured** during the **Period of Insurance** for the purpose of evaluating the conduct of the **Insured** in such **Insured** capacity, including but not limited to proceedings under the Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 or by reference to the Financial Services and Markets Act 2000.
- 3.11. "**Investigation Costs and Expenses**" means **Defence Costs and Expenses** incurred in the context of an **Investigation**.
- 3.12. "**Loss**" means any damages, judgment, settlement, award, **Defence Costs and Expenses** and/or third party legal costs of or awarded by, or in relation to any proceedings before, any court, arbitral or administrative tribunal, or any duly authorised regulatory or statutory body, which an **Insured** becomes liable to pay as a result of a **Claim**.
- Loss** does not include:
- 3.12.a. **Employee** remuneration, benefits, stock or share options or severance payments;
- 3.12.b. fines, penalties and/or punitive, aggravated or exemplary damages, unless insurable at law.
- 3.13. "**Notified**" means that notice is sent in writing by or on behalf of the **Insured** and/or the **Company**, and received by, the **Insurer**.
- 3.14. "**Outside Director**" means any **Insured** acting in the capacity of a director formally appointed on the written authority and request of the **Company** to the board or equivalent position in any not-for-profit entity other than:
- 3.14.a. the **Company**; or
- 3.14.b. any entity:
- 3.14.b.1. having its securities listed or traded on any US exchange; or
- 3.14.b.2. possessing any tangible or intangible asset located within the USA.
- 3.15. "**Period of Insurance**" means the period stated in the **Certificate**.
- 3.16. "**Pollution and Contamination Defence Costs and Expenses**" means **Defence Costs and Expenses** incurred in relation to any **Wrongful Act** involving any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid,

gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including, but not limited to, material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

- 3.17. "**Premium**" means the amount stated in the **Certificate**.
- 3.18. "**Proposal**" means the written information referred to in the **Certificate** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of any **Insured** or the **Company**.
- 3.19. "**Certificate**" means the document entitled "**Certificate**" that attaches to and forms part of this policy.
- 3.20. "**Subsidiary**" means a **Company** in which the **Company**:
- 3.20.a. owned or owns directly or through one or more of its Subsidiaries more than 50% of the voting rights or more than 50% of the share capital issued in such entity; or
 - 3.20.b. had or has the right to appoint or remove the majority of such entity's board of directors; or
 - 3.20.c. controlled or controls alone pursuant to a written agreement with other shareholders or members the majority of the voting rights in such entity, provided that the **Company** is also a shareholder in it; but only in respect of **Wrongful Acts** committed in relation to the **Subsidiary** while a **Subsidiary** of the **Company**
- 3.21. "**Total Gross Assets**" means the **Total Gross Assets** of the **Company** and its Subsidiaries as shown in its audited consolidated group accounts most recently preceding the **Period of Insurance**.
- 3.22. "**Wrongful Act**" means any actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by an **Insured** acting in his or her capacity as a director or officer of the **Company** or any allegation made against the **Insured** by reason of his or her capacity as a director or officer of the **Company**.

4. LIMIT OF INDEMNITY

- 4.1. The limit of indemnity means the maximum amount payable by the **Insurer** under this policy for the Period of Insurance (including any **Discovery Period** and run-off period under clause 5.4) irrespective of the number of **Claims** and/or the number of **Claimants** and/or the number of **Insured's**, Companies or Subsidiaries. All inner or sub-limits form part of and, where paid, erode the limit of indemnity and are in all respects subject to the terms, conditions, limits, exclusions and other provisions of this policy. As regards **Outside Director** cover the limit of indemnity shall be further reduced by the amount of any other potentially applicable cover, whether or not paid.
- 4.2. The limit of indemnity shall be as stated in the **Certificate**. The aggregate sub-limit shown in the **Certificate** shall apply as part of and where paid, in whole or in part, erode the limit of indemnity.
- 4.3. Any payment in respect of insuring clause 2.1 and/or 2.2 and/or any endorsement or otherwise shall erode the limit of indemnity.
- 4.4. The limit of indemnity shall be the maximum the **Insurer** shall be called upon to pay in respect of any Period of Insurance (including any **Discovery Period**) irrespective of the number of **Claims**, **Claimants** or **Losses** and to include all **Defence Costs and Expenses** and **Investigation Costs and Expenses**.

5. DEDUCTIBLE

- 5.1. The deductible means the first part of any **Claim** payable by the **Company** together with any unpaid **Premium**. The **Insurer** shall only be liable to the extent that any liability exceeds the relevant deductible.

- 5.2. The deductible shall be nil except where otherwise stated in the **Certificate** shall apply in respect of insuring clause 2.1 (b) insofar as the **Insurer** is called upon to pay **Loss** arising in connection with any legal proceedings in the USA or for the enforcement of any order or judgment of any USA court.
- 5.3. Payment of any such deductible by the **Company** is a condition precedent to payment by the **Insurer**.
- 5.4. The deductible includes **Defence Costs and Expenses** and **Investigation Costs and Expenses**.

6. EXTENSIONS

Subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy:

6.1. Automatic Acquisition Cover

This policy provides automatic cover for **Loss** arising out of any newly created or acquired **Subsidiary**, including by merger, to the extent that:

- 6.1.a. the **Total Gross Assets** of the **Company** at the commencement of the **Period of Insurance** combined with any applicable **Discovery Period** are not increased by the acquisition or creation of such **Subsidiary** or Subsidiaries by more than 20%; and
- 6.1.b. any **Wrongful Act** for which cover is sought takes place while the **Subsidiary** is a **Subsidiary** of the **Company**.

This extension shall not apply to any new **Subsidiary**:

- 6.1.b.1. having its securities listed or traded on any US exchange; or
- 6.1.b.2. possessing any tangible or intangible asset located within the USA.

6.2. Takeovers and Mergers

If during the **Period of Insurance** the **Company** merges with or consolidates into another entity, or any person or entity acquires 50% or more of its issued share capital:

- 6.2.a. the **Company** shall within thirty days give written notice to the **Insurer** of such merger, consolidation or acquisition; and
- 6.2.b. cover shall thereafter apply only to **Wrongful Acts** committed prior to the effective date of such merger, consolidation or acquisition.
- 6.2.c. the **Company** may cancel the remainder of this policy on behalf of the **Company** and all **Insured's** by sending written notice to the **Insurer**, stating the date from which the cancellation is to take effect.

6.3. Discovery Period

In the event that the **Insurer** cancels this policy for any reason other than non-payment of **Premium**, or refuses to offer renewal terms (changes in the Limit of Indemnity, deductible, **Premium** or any other terms and conditions do not constitute a refusal to offer renewal terms for the purpose of this clause) or the **Insured** elects not to renew with the **Insurer**, the **Insurer** will (upon request by or on behalf of the **Insured** to be received within no more than fourteen days after expiry) offer as an extension of the **Period of Insurance** a **Discovery Period** of up to twelve months at 100% additional **Premium** for **Wrongful Acts** committed prior to expiry of the **Period of Insurance**. The limit of indemnity for the **Period of Insurance** including the **Discovery Period** shall remain as set out in the **Certificate**. This **Discovery Period** shall terminate immediately upon the **Insured** purchasing any other Directors and Officers policy cover (irrespective of whether it is equivalent to this policy in scope) and any unearned **Premium** shall be returned as soon as possible.

6.4. Retirement Run-off

In the event that this policy is not renewed on expiry with the **Insurer** and provided that there is no available indemnity under any other Directors and Officers policy this policy shall extend to cover any **Insured** who had retired or resigned from

the **Company** prior to the date of such expiry in respect of **Claims** made against that **Insured** for a further six years immediately following such date. However this extension shall apply only:

- 6.4.a. in respect of **Wrongful Acts** committed during the original **Period of Insurance** and
- 6.4.b. in respect of **Wrongful Acts** committed during any previous **Period of Insurance** in which the **Insurer Insured** the **Insured** and
- 6.4.c. up to aggregate sub-limit stated in the **Certificate** in respect of each director or officer in the Period of Insurance combined with any **Discovery Period**.

6.5. Outside Boards

This cover shall extend to any **Wrongful Act** committed in the capacity of **Outside Director**, but only in excess of the aggregate of:

- 6.5.a. any other potentially applicable cover, whether or not it actually responds; and
- 6.5.b. a deductible which shall be double the deductible figure specified in Clause 4.

7. EXCLUSIONS

The **Insurer** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with:-

7.1. Known Claim or Circumstance

any **Claim** or circumstance(s) which may give rise to a liability under this policy and which **Claim** or circumstance(s) was (or were) known to the **Insured** or the **Company** prior to the **Period of Insurance**.

7.2. Prior and Pending Litigation

any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and pending litigation commenced prior to the date set out in the **Proposal**.

7.3. Securities

any purchase, exchange or sale, or offer to purchase or sell, securities of any description by means of a prospectus or private placement on or after the commencement of the **Period of Insurance**. However the **Insurer** may at its discretion offer such cover in this regard on terms including as to **Premium** as it may think appropriate, subject to the supply and review of all material information and documentation connected with the prospectus or private placement.

7.4. Death or Bodily Injury

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person, except:

- 7.4.a. where directly caused by a **Wrongful Act** and
- 7.4.b. in respect of any **Wrongful Act** related to **Employment** and
- 7.4.c. in respect of **Criminal Defence Costs and Expenses** in any criminal proceedings or **Investigation** under Health and Safety legislation including corporate manslaughter or the equivalent in any jurisdiction, up to the limit in the **Certificate**.

7.5. Property Damage

any damage to or destruction or **Loss** of any property including **Loss** of use except where indirectly caused by a **Wrongful Act**.

7.6. Dishonest, Fraudulent or Criminal Acts

any dishonest, fraudulent or criminal act or omission or any wilful breach of any statute, rule or law by the **Insured**. For the purpose of this exclusion, no individual **Insured** shall be denied cover unless possessed of actual knowledge of the relevant act or omission at the commencement of the **Period of Insurance**. This exclusion shall only apply where there has been a final adjudication by any court, tribunal or other similar body, or admission by the **Insured** of such conduct.

7.7. Profit or Advantage

any personal profit, remuneration or advantage gained by the **Insured** to which the **Insured** was not legally entitled according to the judgement of a court, a court-approved settlement or by some other final determination. For the purpose of this exclusion, no individual **Insured** shall be denied cover unless possessed of actual knowledge of the relevant act or omission at the commencement of the **Period of Insurance**. This exclusion shall only apply where there has been a final adjudication or admission by the **Insured** of such conduct.

7.8. Pollution

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or re**Claimed**) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof. However this exclusion shall not apply to:

- 7.8.a. **Defence Costs and Expenses** in relation to any **Wrongful Act** concerning such matters.
- 7.8.b. any **Claim** against the **Insured** instigated by one or more shareholders of the **Company** in the name of the **Company** without the willing assistance or involvement of the **Insured**.

7.9. Insured versus Insured

any **Claim** brought by or on behalf of the **Company** or any **Insured** in any jurisdiction within the United States of America or Canada, or which directly or indirectly arises out of or is connected with any event, occurrence or activity within the United States of America or Canada; except that this exclusion shall not apply to:

- 7.9.a. any **Claim** in respect of a wrongful dismissal or **Employment** discrimination brought by an **Insured**;
- 7.9.b. any **Claim** brought or maintained by an **Insured** for contribution or indemnity, if the **Claim** directly results from another **Claim** which would otherwise have been covered by this policy;
- 7.9.c. any shareholder derivative action brought in the name of the **Company**, without the solicitation, assistance, participation or intervention of any **Insured** or the **Company**;
- 7.9.d. any **Claim** by a legally authorised individual or entity, other than the **Company** itself, brought in the name of the **Company**, without the solicitation, assistance, participation or intervention of any **Insured** or the **Company**;
- 7.9.e. any **Claim** by a former **Insured**,
- 7.9.f. any **Claim** by the **Company** against the **Insured** where, prior to making any such **Claim** the **Company** has provided to the **Insurer** a written opinion from a Queen's Counsel or Foreign Lawyer of equivalent standing in the applicable jurisdiction, where appropriate, confirming a prospect of success of the **Claim** of not less than sixty-five percent. The choice of Queen's Counsel or Foreign Lawyer must first be approved by the **Insurer** and he or she is to be jointly instructed on behalf of both the **Company** and the **Insurer**, but at the **Company**'s sole expense. The instructions are to be prepared by the **Company**'s solicitors and approved by the **Insurer** prior to delivery to Counsel, such approval to be given promptly and not to be unreasonably withheld.

7.10. Other Insurance

any matter in respect of which the **Insured** or **Company** is (or but for the existence of this policy would be) entitled to cover under any other contract of insurance, except where such other insurance is written as specific excess insurance to provide an indemnity in excess of the amount payable under this policy. This policy shall only apply in excess of such other policy to the extent of such part of the limit of indemnity or any applicable sub-limit as exceeds the limit of the other policy.

7.11. Employee Benefit

any retirement, pension, profit-sharing, health, welfare or any other **Employee** benefit fund, trust scheme or plan, or related legislation or regulations anywhere in the world including but not limited to the US **Employee** Retirement Income Security Act 1974 and UK Pensions Act 1995 and/or subsequent amending or re-enacting legislation.

8. CONDITIONS

8.1. Contracts (Rights of Third Parties) Act

Under the contract of insurance comprised by this policy there is no intention to confer any rights on any party except **Insurers** and those named or defined as **Insured's** herein, and no third party shall acquire any rights in relation to this policy by operation of the Contracts (Rights of Third Parties) Act 1999 or any re-enactment of or amendment to it.

8.2. Proposal Operation

The **Proposal** shall operate severally in relation to each **Insured** and no statement, information or knowledge on the part of any **Insured** shall be imputed to any other **Insured** for the purposes of determining whether cover is available to that other **Insured**.

8.3. Notification

As a condition precedent to cover under this policy the **Insurer** must be **Notified** during the **Period of Insurance**, in writing to the Notification Address set out below and within thirty days:

- 8.3.a. of any **Claim**;
- 8.3.b. regardless of any previous notice, of receipt of any **Claim** Form, Particulars of **Claim**, Arbitration Notice of any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- 8.3.c. of any circumstance(s) of which the **Insured** or **Company** shall become aware which is or are likely to give rise to a **Claim**; of any circumstance(s) of which the **Insured** or **Company** shall become aware which is (or are) likely to give rise to an entitlement to be indemnified under this policy. In the event that the **Insurer** is **Notified** during the **Period of Insurance** of any circumstance(s) which in the **Insurer's** reasonable opinion is (or are) likely to give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance(s) so **Notified** shall be deemed to have been made during the **Period of Insurance**. Notification Address:

Insurance team
VCS Insurance **Company** Limited
c/o AdviceUK
6th Floor
63 St Mary Axe
London
EC3a 8AA

8.4. Duty to Cooperate

As a condition precedent to the right to be indemnified under this policy the **Insured** and/or **Company** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance(s) likely to give rise to a **Claim** and any circumstance(s) where the **Insured** and/or **Company** has requested to be indemnified under this policy and provide such cooperation and assistance as the **Insurer** and it's representatives, legal advisers or agents may reasonably require. It is a condition precedent to the right to be indemnified under this policy that the **Insured** and **Company** (or any person, firm or

Company acting for or on behalf of the **Insured** and **Company**) shall ensure that all documents relevant to any **Claim** and any circumstance(s) likely to give rise to a **Claim** shall not be intentionally destroyed or otherwise intentionally disposed of.

8.5. No Admission of Liability

As a condition precedent to the right to cover under this policy the **Insured** and/or **Company** shall not, without the prior written approval of the **Insurer**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance(s) likely to give rise to a **Claim** or any circumstance(s) where the **Insured** and/or **Company** has requested cover under this policy.

8.6. Insurer Entitled to Defend

The **Insurer** shall be entitled, but not obliged, to take over the **Investigation**, defence and settlement of any **Claim** and any circumstance(s) likely to give rise to a **Claim** and any circumstance(s) where the **Insured** has requested cover under this policy including as to the choice and appointment of legal representation. The **Insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insurer** and the **Insured**) provided always that the **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

8.7. Subrogation

The **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party before or after any payment is made under this policy provided always that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** of the **Company** unless the **Loss** in respect of which payment is made under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** and **Company** shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation.

8.8. Avoidance by Insurer

If the **Insurer** is entitled, for any reason, to avoid this policy ab initio, the **Insurer** may in its absolute discretion elect instead to give notice to the **Insured** or any of them that it regards this policy as being in full force and effect, except that no cover will be given under this policy that arises from or is related to the ground(s) that entitled the **Insurer** to avoid this policy.

8.9. Data Protection Act 1998

It is agreed by the **Company** on behalf of itself and the **Insured** that any information provided to the **Insurer** regarding the **Insured** and **Company** will be processed by the **Insurer** and AdviceUK, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

8.10. Premium Payment

It is agreed that in the event of cancellation for non-payment of **Premium** the **Insurer** shall give not less than fifteen days prior notice to the **Company** either direct or via the broker. If **Premium** due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate at the end of the notice period.

8.11. Advanced Payment of Costs

The **Insurer** shall pay **Defence Costs and Expenses** incurred with its prior written consent, such consent not to be unreasonably withheld. However in the event and to the extent that it is finally determined that the **Insured** is not entitled to such payments under this policy the sums advanced shall be repaid to the **Insurer** upon demand or the limit of indemnity reduced by the amount of such **unInsured** advance payment. The **Company** shall where it is permitted to do so pay legal representation costs on behalf of the **Insured** to the amount of any deductible applicable under this policy.

8.12. Allocation

In the event of any **Loss** being partially covered and/or any **Claim** against an **Insured** being also made against the **Company** and/or one or more persons who are not **Insured** the **Insured, Insurer** and/or **Company** shall use their best endeavours fairly and reasonably to agree such an allocation of **Loss** to the policy as may be appropriate and proportional to the aggregate of **Insured** and uninsured **Loss**, damages and legal and other costs.

9. INTERPRETATION

In this policy:

- 9.1.a. reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- 9.1.b. if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- 9.1.c. the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

10. GOVERNING LAW AND DISPUTES

- 10.1. This policy shall be governed by and construed in accordance with the law of England and Wales, the courts of which shall have sole jurisdiction to deal with any matters in dispute not determinable by arbitration.
- 10.2. In the event that any dispute should arise between the **Insurer** and the **Insured** as to the terms and effect of this policy then such dispute shall be referred to arbitration before a sole arbitrator in London, England, to be appointed, in the event that the **Insurer** and **Insured** cannot agree upon a suitable person, by the President for the time being of the Chartered Institute of Arbitrators of England and Wales.

11. POLICYHOLDER COMPLAINTS

VCS Insurance **Company** Limited is dedicated to providing a high quality service and wants to ensure that it maintains this at all times. If the **Insured** feels that VCS have not offered a first class service or if the **Insured** has any questions or concerns about the policy or the handling of a **Claim** the **Insured** should, in the first instance, contact its broker through whom this insurance was placed.

If the **Insured** is unable to resolve the situation and wishes to make a complaint, the **Insured** can do so at any time by referring the matter to:

Post: Insurance Team
VCS Insurance Company Limited
c/o AdviceUK
WB1
PO Box 70716
London
EC1P 1GQ
Tele: 0300 777 0107
E-mail: insurance@adviceuk.org.uk

VCS Insurance Company Limited is an incorporation under number 44303 in accordance with The Companies (Guernsey) Law 2008, and is a licensed Insurer registered with the Guernsey Financial Services Commission under the Insurance Business (Bailiwick of Guernsey) Law 2002. Registered address: Level 5 , Mill Court, La Charroterie , St Peter Port, Guernsey, GY1 1EJ.