



Angel Directors & Officers Liability Insurance

Form SJC2011-D&O-Angel

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Introduction

This **Policy** consists of the Introduction, Operative Clauses, Extensions, Definitions, Limit of Indemnity, Exclusions, Conditions, **Schedule** and endorsements, all of which are a single document and are to be read as one contract. The words shown in bold type are Definitions and have the same meaning wherever they are shown throughout this **Policy**. Other Definitions are shown in the Extensions to which they apply.

Please read the **Policy** carefully and make sure that it meets your needs. You should contact your broker immediately if any corrections are necessary.

Data Protection Act

Any information provided to the **Insurers** regarding the **Company**, **Director** or any **Employee** will be processed by the **Insurers**, 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.

Third Party Rights

It is not the intention of this **Policy** that any party except the **Insurers** and those named or defined as insured herein or other parties specifically insured by this **Policy** should acquire any rights under or in relation to it nor be entitled to the benefit of any of its terms.

Complaints Procedure

Catlin Insurance Company (UK) Ltd. is dedicated to providing a high quality service and we want to ensure that we maintain this at all times. If you feel that you have not been offered a first class service or if you have any questions or concerns about the **Policy** or the handling of a **Claim** you should, in the first instance, contact your representative through whom this **Policy** was placed.

If you are unable to resolve the situation and wish to make a complaint you can do so at any time by referring the matter to:

Compliance Officer
Catlin Insurance Company (UK) Ltd.
20 Gracechurch Street
London, EC3V 0BG
Telephone Number: 020 7743 8487
Email: Catlinukcomplaints@catlin.com

Complaints that cannot be resolved by the Compliance Officer may in certain circumstances be referred to the Financial Ombudsman Service at:

South Quay Plaza
183 Marsh Wall
London, E14 9SR
Tel No: 0800 0234 567
Email: complaint.info@financial-ombudsman.org.uk

Further details will be provided on request and at the appropriate stage of the complaints process.

1 Operative Clauses

The **Insurers** will pay on behalf of:

- (a) **Director's Liability**
the **Director** all **Loss** that the **Director** is legally liable to pay;
- (b) **Corporate Reimbursement**
 - (i) the **Company** any **Loss** that the **Company** is legally required or permitted to pay the **Director** as advancement or indemnity under any applicable company law or agreement;
 - (ii) the **Company** any such **Criminal Defence Costs and Expenses** that the **Company** is legally required or permitted to pay the **Director** as advancement or indemnity;

Trigger:

for a **Claim** against the **Director** for a **Wrongful Act** or an **Employment Practices Wrongful Act** provided that the **Claim** is first made against the **Director** during the **Period of Insurance** or discovery period if applicable.

- (c) **Defence and Investigation Costs**
The **Insurers** will pay on behalf of the **Director**:
 - (i) **Defence Costs and Expenses** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under the Operative Clause 1 (a) and (b);
 - (ii) **Defence Costs and Expenses** in the investigation of any circumstance(s) notified to the **Insurers** under the Notification condition which is (or are) likely to give rise to a **Claim**;
 - (iii) **Defence Costs and Expenses** in the defence or investigation of an **Identity Theft Claim**
 - (iv) **Investigation Costs and Expenses**;
 - (v) **Criminal Defence Costs and Expenses**;
 - (vi) **Pollution and Contamination Defence Costs and Expenses**;
 - (vii) **Extradition Proceedings Defence Costs and Expenses**;
 - (viii) **Asset and Liberty Proceedings Defence Costs and Expenses**;
 - (ix) **Public Relations Costs**.
- (d) The **Insurers** will pay on behalf of the **Company** the **Shareholders Derivative Costs**.

2 Extensions

Subject to all other terms, conditions, exceptions, limits and exclusions of this **Policy**:

2.1 Additional Limit

In the event that payments are made exhausting the Limit of Indemnity, and all other applicable insurance policies operating in excess of this **Policy**, and any other source available to provide indemnification for **Loss** to the **Director** have also been exhausted, then **Insurers** agree to provide an additional Limit of Indemnity to the **Director** for any subsequent **Claim** made within the **Period of Insurance**.

Provided that:

- (a) the **Claim** is brought against a **Director**;
- (b) the **Claim** is payable under the Operative Clause 1 (a);
- (c) the maximum additional aggregate limit shall not exceed 10% of the Limit of Indemnity any one **Director**.
- (d) the maximum additional aggregate payable by **Insurers** shall not exceed the amount stated in the **Schedule**.

2.2 Automatic Acquisition Cover

This **Policy** provides automatic cover for **Loss** arising out of a **Claim** against any newly created or acquired **Subsidiary**, including by merger, provided:

- (a) the **Total Gross Assets** of the **Company** at the commencement of the **Period of Insurance** are not increased by the acquisition or creation of such **Subsidiary** or **Subsidiaries** by more than 25%; and
- (b) any **Wrongful Act** takes place while the **Subsidiary** is a **Subsidiary** of the **Company**.

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

- (a) having its securities listed or traded on any exchange; or
- (b) possessing any tangible or intangible asset located within the USA and /or Canada.

2.3 Discovery

In the event **Insurers** refuse to offer renewal terms, cancel this **Policy** (or any part of the **Policy**) for any reason other than non-payment of Premium or this **Policy** is not renewed on the expiry of the **Period of Insurance**, the **Insurers** will offer as an extension of the **Period of Insurance** an additional discovery period of twelve months at 100% additional premium. Provided the request for this extension and the premium due is received by **Insurers** no more than thirty days after the expiry of the **Period of Insurance**. During this discovery period any **Claim** arising from a **Wrongful Act** committed prior to the expiry of the **Period of Insurance** may be notified to **Insurers**. The Limit of Indemnity for the **Period of Insurance** including the discovery period shall remain as set out in the **Schedule**. This discovery period shall terminate immediately upon the purchasing of any other directors and officers policy cover (irrespective of whether it is equivalent to this **Policy** in scope).

2.4 Emergency Defence Costs

In the event the **Director** is unable to contact the **Insurers** or their representatives to obtain consent to authorise **Defence Costs and Expenses** following a **Claim**, then **Insurers** agree to reimburse the **Director** for emergency **Defence Costs and Expenses** incurred for a period of up to fourteen days from the date the **Claim** was first made up to the amount stated in the **Schedule**.

2.5 Management Buy Outs

If during the **Period of Insurance** the **Company** undergoes a management buy-out where 50% or more of its issued share capital changes hands then **Insurers** agree that this **Policy** will remain in force on the same Operative Clauses, Exclusions, Definitions, Limits of Indemnity and Conditions for a period of up to 30 days from the buy-out date for any **Claim** against the new **Directors** for a **Wrongful Act** provided that the **Claim** is first made against the new **Directors** and notified to **Insurers** within the 30 day period.

2.6 Outside Boards

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

- (a) the amount of **Loss** the **Outside Director** serving on the outside board is indemnifiable by the outside entity.
- (b) any other potentially applicable cover, whether or not it actually responds.

2.7 Personal Appointments

This **Policy** shall extend to 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 a **Director** whilst serving in a personal capacity as a governor or trustee of a **School, Charity or Charitable Organisation** but only in excess of the aggregate of:

- (a) the amount of **Loss** indemnifiable by the **School, Charity or Charitable Organisation** to the **Director**.
- (b) any other potentially applicable cover, whether or not it actually responds.

Provided that:

- (a) the **Director** is formally appointed on written authority.
- (b) the maximum aggregate payable by **Insurers** shall not exceed the amount stated in the **Schedule**.

2.8 Retirement Run-off

In the event this **Policy** is not renewed or replaced with any other Directors and Officers policy **Insurers** agree to offer certain **Directors** who had retired or resigned from the **Company** during the **Period of Insurance** or a previous **Period of Insurance** which is linked by continuous renewal to this **Period of Insurance**, an additional discovery period of up to 72 months immediately following such retirement or resignation as an extension to the **Period of Insurance**. During this discovery period any **Claim** arising from a **Wrongful Act** committed during the original **Period of Insurance** may be notified to **Insurers**. This discovery period shall run concurrently with any other discovery period **Insurers** may offer and shall terminate immediately upon the **Company** or **Director** purchasing any other directors and officers cover.

The maximum aggregate payable by **Insurers** shall not exceed the amount stated in the **Schedule**.

This Extension shall not apply to any **Director** who has been or is presently disqualified or has left the **Company** as a result of a merger, consolidation or acquisition as detailed in the Takeovers and Mergers clause 2.9.

2.9 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:

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

3 Definitions

3.1 Asset and Liberty Proceeding

Proceedings brought against the **Director** by anybody (including the Financial Services Authority) other than the **Company**, so authorised for the purpose of examining the affairs of the **Company** or the conduct of the **Director** in their capacity as such, seeking:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of a **Director**;
- (b) a charge over real property or personal assets of such **Director**;
- (c) a temporary or permanent prohibition on such **Director** from holding the office of or performing the function of a **Director**;
- (d) a restriction of such **Director**'s liberty to a specified domestic residence or an official detention;
- (e) deportation of a **Director** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Director**'s conviction of a crime.

3.2 Asset and Liberty Proceedings Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in dealing with an **Asset and Liberty Proceeding**, provided that such proceeding is commenced during the **Period of Insurance**.

3.3 Claim

A demand made of, or allegation of a right against, a **Director** which is communicated to the **Director**. 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 to **Insurers**, provided that all such related or connected **Claims** are notified during the same **Period of Insurance** or the discovery period if applicable.

3.4 Company

The entity named in the **Schedule**, including any **Subsidiary**, but excluding any firm or company acting in their capacity as liquidator, external auditor, receiver or administrative receiver.

3.5 Criminal Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in defending any criminal investigations or proceedings brought against them by any government body for any gross breach of duty of care that causes the death of another person during the **Period of Insurance**.

3.6 Defence Costs and Expenses

Legal costs and expenses incurred by or on behalf of the **Director** with the prior written and continuing consent of the **Insurers**. It does not include any **Director's** or the **Company's** own costs and expenses (including salaries) or any value attributable to the time spent by the **Director**, **Company** or any **Employee** in dealing with a **Claim**. **Defence Costs and Expenses** shall include premium paid for insurance instruments or for bonds which may be required.

3.7 Director

- (a) Any natural person who is a past, present or future director or officer of the **Company** or holds any equivalent position in any jurisdiction;
- (b) any past, present or future **Employee** of the **Company**:
 - (i) acting at the specific prior written request of the **Company** in the capacity of **Outside Director**; or
 - (ii) acting in a managerial or supervisory capacity; or
 - (iii) named as co-defendant with any director or officer.
- (c) any director or officer's lawful spouse or civil partner as defined in the Civil Partnership Act 2004 where in receipt of a **Claim** because of the **Wrongful Act** of the director or officer.
- (d) the director or officer's estate, heirs, legal representatives or assigns.

All references to directors and officers apply equally to non-executive and executive directors.

It does not include any person acting in their capacity as liquidator, external auditor, receiver or administrative receiver.

3.8 Employee and Employment

Any:

- (a) person under a contract of service or apprenticeship with the **Company**;
- (b) person employed by labour only sub-contractors;
- (c) self employed person;
- (d) person hired to or borrowed by the **Company**; or
- (e) person undertaking study or work experience, voluntary work or a youth training scheme with the **Company**;

whilst working for and under the control of the **Company** provided they are not acting as a **Director**.

3.9 Employment Practices Wrongful Act

Any actual or alleged:

- (a) discrimination with respect to the terms or conditions of **Employment** on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
- (b) sexual harassment, including unwelcome sexual or non sexual advances, requests for sexual favours and any unwelcome verbal, visual or physical contact of a sexual nature which:
 - (i) is explicitly or implicitly made a term or condition of **Employment**;
 - (ii) creates a hostile or offensive working environment;
 - (iii) when rejected or opposed by a person becomes a basis for decisions regarding that person's **Employment**;

- (c) defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for **Employment**, professional reputation, disciplinary history or termination of **Employment**;
- (d) wrongful termination of **Employment** or refusal to hire;
- (e) an adverse change in the terms and conditions of a person's **Employment** in retaliation for that person's exercise of his or her rights under law or support of the rights of another.

3.10 Extradition Notice

- (a) any request for the extradition of any **Director**, any warrant for the arrest of any **Director** or other proceedings under the provisions of the United Kingdom Extradition Act 2003;
 - (b) any associated appeal;
 - (c) the equivalent of the above in any other jurisdiction;
- arising from a **Wrongful Act**.

3.11 Extradition Proceedings Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in dealing with an **Extradition Notice**, provided the **Extradition Notice** is first served on the **Director** during the **Period of Insurance**.

3.12 Identity Theft Claim

A **Claim** made by a third party to enforce an agreement entered into with another person or entity fraudulently representing themselves as a director in connection with the **Company** business notified to **Insurers** during the **Period of Insurance**.

3.13 Insurers

Catlin Insurance Company (UK) Ltd.

3.14 Investigation

A formal investigation, enquiry or request for information of or attendance by the **Director** initiated by a third party with a legal right other than the **Company** authorised so to compel the **Director** for the purpose of evaluating the conduct of the **Director**.

3.15 Investigation Costs and Expenses

Defence Costs and Expenses incurred in the context of an **Investigation**.

3.16 Loss

An award of compensatory damages made by a competent court or tribunal including third party costs or any settlement incurred with the prior written consent of the **Insurers**.

Loss does not include

- (a) **Director** or **Employee** remuneration, benefits, stock or share options or severance payments; or
- (b) taxes, fines or civil, regulatory or criminal penalties or
- (c) punitive, aggravated or exemplary damages; or
- (d) In respect of any **Employment Practices Wrongful Act**:
 - (i) any salary or wages earned while in the **Employment** of the **Company**.
 - (ii) any **Employment** related benefits to which the claimant would have been entitled as an **Employee** had the **Director** or the **Company** provided the claimant with a continuance, reinstatement or commencement of **Employment**.
 - (iii) contractual damages based upon the terms of a contract of **Employment**.
 - (iv) any liability or costs incurred by any **Director** or the **Company** to modify any building or property in order to make such a building or property more accessible or accommodating to any disabled persons.

3.17 Outside Director

A **Director** 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 organisation in which the **Company** holds a shareholding, any not-for-profit entity or any other entity which has been specified in the **Schedule** other than:

- (a) the **Company**; or
- (b) any entity:
 - (i) having its securities listed or traded on any exchange; or
 - (ii) possessing any tangible or intangible asset located within the USA and/or Canada.

3.18 Pension/Employee Benefit Scheme

A money purchase (defined contribution) pension or employee benefit scheme which is registered in the United Kingdom and governed by the laws of England and Wales.

3.19 Period of Insurance

The period shown in the **Schedule** during which time the **Policy** is in force.

3.20 Policy

This insurance contract.

3.21 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 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.

3.22 Pollution and Contamination Defence Costs and Expenses

Defence Costs and Expenses incurred in relation to any **Wrongful Act** involving **Pollution**.

3.23 Proposal

The written proposal or proposals, whether or not using a special form or including a presentation document, made by or on behalf of the **Directors** or **Company** for the insurance evidenced by this **Policy**, including any, statements of fact, declarations, warranties or information which the **Insurers** have relied on.

3.24 Public Relations Costs

Reasonable fees, costs and expenses of the public relations consultants incurred by a **Director** with the prior written consent of the **Insurers** to be given at their absolute discretion where they are satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **Director's** reputation from a **Claim** first made against the **Director** during the **Period of Insurance**.

3.25 Schedule

The schedule attaching to the **Policy**.

3.26 School, Charity or Charitable Organisation

- (a) a place or institution for teaching and learning; or
 - (b) a body registered with the Charities Commission; or
 - (c) a voluntary organisation which does not distribute its surplus funds to owners or shareholders, but instead uses them for the benefit of its members or charitable purposes;
- in the United Kingdom.

3.27 Shareholders Derivative Costs

Reasonable fees, costs and expenses incurred by any shareholder of the **Company** in pursuing a **Claim** first made during the **Period of Insurance** against a **Director** for a **Wrongful Act** by way of a shareholder derivative action on behalf of the **Company** but only to the extent that the **Company** is legally liable to pay such fees, costs and expenses pursuant to an order of the Court.

3.28 Subsidiary

An entity in which the **Company**:

- (a) owned or owns directly or indirectly more than 50% of the voting rights or more than 50% of the share capital issued in such entity; or
- (b) had or has the right to appoint or remove the majority of such entity's board of directors; or
- (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**

3.29 Total Gross Assets

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**.

3.30 Trigger

The Trigger is what must happen during the **Period of Insurance** in order for coverage to be considered under the **Policy**.

3.31 Wrongful Act

An actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by a **Director** acting in his or her capacity as a director of the **Company** or as a director or administrator of a **Pension/Employee Benefit Scheme** of the **Company**. Any allegation made against a **Director** by reason of his or her capacity as a director of the **Company** or as a director or administrator of a **Pension/Employee Benefit Scheme** of the **Company**.

4 Limit of Indemnity

4.1 Notwithstanding the Additional Limit (clause 2.1) the Limit of Indemnity is the maximum aggregate amount payable by the **Insurers** under this **Policy** including any discovery period, endorsements or Extensions irrespective of the number of **Claims**.

4.2 The Limit of Indemnity shall be as stated in the **Schedule**.

4.3 Any payment in respect of Operative Clauses 1 (a),(b),(c) or (d) and Extensions Clauses 2.2 to 2.9 inclusive shall erode the Limit of Indemnity. Once the Limit of Indemnity is completely eroded then, subject to the Additional Limit (clause 2.1) **Insurers** shall have no further liability under this **Policy**.

4.4 The sub-limits of indemnity are shown in the **Schedule** relate to specific clauses. These sub-limits are aggregated and form part of the Limit of Indemnity and so where paid, in whole or in part, they shall erode the Limit of Indemnity. Once such sub-limit is completely eroded then **Insurers** shall have no further liability under the relevant clause.

4.5 If the Additional Limit (clause 2.1) is triggered, then each and every further payment to that **Director** shall erode the per **Director** aggregate limit. Once the per **Director** aggregate limit and the maximum aggregate amount payable by **Insurers** stated in the **Schedule** has been completely eroded, the **Insurers** shall have no further liability under this **Policy**.

5 Exclusions

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

5.1 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:

- (a) in respect of any **Employment Practices Wrongful Act**; or
- (b) in respect of **Criminal Defence Costs and Expenses** in any criminal proceedings or investigation under health and safety/manslaughter or corporate manslaughter legislation for gross breach of duty of care that causes the death of another person or the equivalent in any jurisdiction.

5.2 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 **Director**.

For the purpose of this Exclusion, no individual **Director** 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 **Director** of such conduct.

5.3 Other Pension and Employee Benefit Schemes

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. Other than as described in Definitions 3.18 **Pension and Employee Benefit Schemes**.

5.4 Known Claim or Circumstance

Claims or circumstances known to the **Company** or **Director** or which the **Company** or **Director** ought to have known prior to the commencement of the **Period of Insurance**.

5.5 Other Insurance

Any matter in respect of which the **Company** or **Director** is (or but for the existence of this **Policy** would be) entitled to cover under any other policy, 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.

5.6 Pollution

Any **Pollution**. However this Exclusion shall not apply to:

- (a) **Pollution and Contamination Defence Costs and Expenses** in relation to any **Wrongful Act** concerning such matters.
- (b) a **Claim** against a **Director** for a **Wrongful Act** by way of a shareholder derivative action.

5.7 Professional Indemnity

Any **Claim** arising from or connected with the giving of professional advice or service whether or not for remuneration or any act, error or omission relating thereto.

This Exclusion shall not apply to a **Claim** for a **Wrongful Act** against a **Director** brought by a shareholder of the **Company** or by way of a shareholder derivative action.

5.8 Profit or Advantage

Any unlawful personal profit, remuneration or advantage gained by the **Director** or a financial advantage to an entity in which the **Director** has a financial interest.

This Exclusion shall only apply to a **Director** who has admitted such conduct has occurred or against whom there has been a final adjudication by a competent court or tribunal that such conduct has occurred.

5.9 Property Damage

Any damage to or destruction or loss of any property including loss of use.

5.10 Radioactive Contamination

Any:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.11 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 **Insurers** may at their 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.

5.12 Shares Exclusion (Wrongful Act)

Any **Claim** brought by or on behalf of, whether directly or derivatively, any individual or entity which owns or controls 30% or more of the issued and outstanding share capital of the **Company** provided that this Exclusion shall only apply to **Claims** where such individual or entity or their representative has, directly or indirectly, participated in or ratified the alleged **Wrongful Act** being the subject of a **Claim**.

5.13 United States of America and/or Canada

Any **Claim**, allegation, proceeding or **Investigation** brought in the United States of America (USA) or Canada, including the enforcement outside the USA or Canada of any judgment, order, award or settlement made within the USA or Canada or which arises from or is connected, directly or indirectly, with:

- (a) any event, occurrence or activity of any sort within the USA or Canada;
- (b) the holding of or dealing in securities listed or traded on any US or Canadian Exchange or any other form of assets, tangible or intangible in the USA or Canada;
- (c) activity in the USA or Canada of any parent, **Subsidiary**, associated company, joint venture or special purpose vehicle or company whether or not registered in the USA or Canada.

6 Conditions

6.1 Advanced Payment of Costs

The **Insurers** shall pay **Defence Costs and Expenses** incurred with their prior written consent. However in the event and to the extent that it is finally determined that the **Company** or **Director** is not entitled to such payments under this **Policy** the sums advanced must be repaid to the **Insurers** upon demand.

6.2 Allocation

In the event of any **Loss** being partially covered and/or any **Claim** against a **Director** being also made against the **Company** and/or one or more persons who is not a **Director**, the **Insurers** 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.

6.3 Avoidance by Insurers

If **Insurers** are entitled, for any reason, to avoid this **Policy** ab initio, the **Insurers** may in their absolute discretion elect instead to give notice to the **Company** or the **Director** that they regard 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 **Insurers** to avoid this **Policy**.

6.4 Consent to Settle

The **Insurers** shall not settle any **Claim** without the written consent of the **Company** or **Director**. If the **Director** refuses to consent to a settlement demand acceptable to the claimant and recommended by the **Insurers** and elects instead to contest the **Claim**, then the **Insurers'** total liability for such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus any **Defence Costs and Expenses** incurred as of the date such **Claim** could have been settled and to which this **Policy** would otherwise apply.

6.5 Fraudulent Claims

If any **Claim** under this **Policy** is in any respect fraudulent, this **Policy** shall become void ab initio and all benefit hereunder shall be forfeited.

6.6 Insurers Entitled to Defend

The **Insurers** 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 cover has been requested under this **Policy** including as to the choice and appointment of legal representation. The **Insurers** shall have full discretion in the handling thereof.

6.7 Law and Dispute Jurisdiction

- (a) This **Policy** shall be governed by and construed in accordance with the law of England and Wales.
- (b) Any dispute or difference arising under or in respect of this **Policy** shall be subject to the exclusive jurisdiction of the courts of England and Wales.

6.8 Changes in Information and Circumstances

Insurers must be given notice of any change in information or alteration in risk which becomes known to the **Company** or any **Director** during the **Period of Insurance** which materially affects or changes the information provided to **Insurers** in the **Proposal**. Until **Insurers** have been advised of such alteration or circumstance and have agreed in writing to accept liability for such altered risk, **Insurers** shall not be liable for any **Claim** due wholly or partially to any such alteration or change. Alterations or changes in information accepted by **Insurers** will thereafter form part of the **Proposal**.

6.9 Misrepresentation and Non-Disclosure

In providing this **Policy** **Insurers** have relied upon the information contained in the **Proposal**. The person completing the **Proposal** must make proper enquiries ensuring that all the statements in the **Proposal** are accurate and that the **Directors** or the **Company** have not withheld or misrepresented any material information (material information is information that is likely to influence **Insurers** acceptance or assessment of the risk) to the **Insurers**. In the event any of the statements in the **Proposal** not being true, **Insurers** may, at their option, modify the **Policy** terms and conditions, change the premium, or withdraw the **Policy** altogether ab initio.

6.10 Non-Imputation

- (a) This **Policy** shall operate severally in relation to each **Director**.
- (b) In determining whether the **Insurers** are entitled to avoid a **Director's** interest in this **Policy** or reject a **Director's** claim for indemnity under this **Policy**, the **Insurers** shall only take into account the **Proposal** made by or the knowledge possessed by or the acts, omissions or conduct of that particular **Director**.

6.11 Claims Procedures

The following conditions are all condition precedent to **Insurers** liability under this **Policy**.

Insurers will not pay any **Claim** for **Loss, Defence and Investigation Costs, Shareholders Derivative Costs** or an **Identity Theft Claim** unless all of these conditions have been complied with:

(a) Notification

Insurers must be notified in writing to the Notification Address shown in the **Policy Schedule** and in accordance with the following provisions:

As soon as practicable during the **Period of Insurance**, in writing to and in any event within thirty days of the end of the **Period of Insurance** or the end of the discovery period (if applicable):

- of any **Claim**;
- regardless of any previous notice, of receipt of any claim form, particulars of **Claim**, arbitration notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- of any circumstance(s) of which the **Company** or **Director** shall become aware which is or are likely to give rise to a **Claim**;
- of any circumstance(s) of which the **Company** or **Director** 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 **Insurers** are notified and accept such notification during the **Period of Insurance** of any circumstance(s) which 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**.

(b) No Admission of Liability

The **Company** or **Director** who claim for indemnity under this **Policy** shall not, without the prior written approval of the **Insurers**, 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 cover has been requested cover under this **Policy**.

(c) Duty to Co-operate

The **Company** and /or **Director** shall:

- (i) provide prompt co-operation, information and assistance as the **Insurers** and its representatives, legal advisors or agents may reasonable require: and
- (ii) ensure that all documents relevant to any **Claim** or any circumstances likely to give rise to a **Claim** shall not be intentionally destroyed or disposed of.

6.12 Order of Payments

Where there are multiple **Claims** for indemnities under this **Policy**, the **Insurers** shall make payments in the order those **Claims** are presented to it.

If it becomes apparent to the **Insurers** in their absolute discretion that the Limit of Indemnity will not be sufficient to cover all expected payments under the **Policy** then the **Insurers** will make payments in the following order:

- (a) payments under the Operative Clause 1 (a) direct to the **Directors**; followed by
- (b) payments under the Operative Clause 1 (b), to the **Company**; followed by
- (c) any other payments to the **Company**.

6.13 Premium Payment

Unless **Insurers** have agreed and accepted an instalment premium payment plan via Direct Debit premium shall be paid in full to the **Insurers** within 30 days of the commencement of the **Period of Insurance**. If **Insurers** have accepted a premium instalment plan, premiums will be requested by **Insurers** via Direct Debit on the instalment due dates.

If the premium due under this **Policy** has not been paid to the **Insurers** by that time or an instalment not paid when requested the **Insurers** shall have the right to cancel this **Policy** by giving the **Company** 7 days written notice. In the event of cancellation, premium is due to the **Insurers** on a pro rata basis for the period that the **Insurers** are on risk but the full **Policy** premium shall be payable to the **Insurers** in the event of a **Claim**.

If the premium due is paid in full to the **Insurers** before the 7 day notice period expires, notice of cancellation shall automatically be revoked. If not, the **Policy** shall automatically terminate at the end of the 7 day notice period.

6.14 Subrogation

In the event of any payment by the **Insurers** under this **Policy**, the **Insurers** shall be subrogated up to the amount of such payment to all the rights of recovery of the **Company** and/or **Director** or any person indemnified against any third party, provided always that they shall not exercise any such rights against any **Employee** or former **Employee** unless the **Loss** was caused or contributed to by a fraudulent, dishonest or malicious act or omission by said person.

The **Company** and/or **Director** and any person indemnified shall, without charge, provide such assistance as the **Insurers** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which they would become subrogated under this **Policy**. The **Company** and/or **Director** and any person indemnified agree that the **Insurers**, at their option, may have the conduct of any proceedings to recover monies paid or payable by them, whether or not the **Company** and/or **Director** or person indemnified has an interest in such proceedings by reason of any uninsured losses.

7. Corporate Liability – Extension

This extension is subject to the Definitions, Exclusions and Conditions of this **Policy**. Additional Definitions, Exclusions and Conditions apply to this extension only.

7.1 Operative Clause

(a) Corporate Liability

The **Insurers** will pay on behalf of the **Company** all **Loss** that the **Company** is legally liable to pay.

Trigger:

for a **Claim** against the **Company** for a **Wrongful Act** or an **Employment Practices Wrongful Act** provided that the **Claim** is first made against the **Company** during the **Period of Insurance**.

(b) Defence and Investigation Costs

The **Insurers** will pay on behalf of the **Company**:

- (i) **Defence Costs and Expenses** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under 7.1 (a);
- (ii) **Defence Costs and Expenses** in the investigation of any circumstance(s) notified to the **Insurers** under the notification condition which is or are likely to give rise to a **Claim**;
- (iii) **Investigation Costs and Expenses**;
- (iv) **Defence Costs and Expenses** in the defence or investigation of an **Identity Theft Claim**;
- (v) **Criminal Defence Costs and Expenses** incurred in defending any criminal investigations or proceedings under the Corporate Manslaughter and Homicide Act 2007. Or the equivalent in any other covered jurisdiction;
- (vi) **Defence Costs and Expenses** incurred in defending any criminal investigations or proceedings under the Bribery Act 2010. Or the equivalent in any other covered jurisdiction;
- (vii) **Pollution and Contamination Defence Costs and Expenses**.
- (viii) **Public Relations Costs**.

7.2 Extensions

(a) Automatic Acquisition Cover

Cover shall be provided to the **Company** as per 2. Extensions 2.2

(b) Defence Costs and Expenses for Breach of Contract

The **Insurers** shall pay on behalf of the **Company**, **Defence Costs and Expenses** resulting from any **Claim** arising from alleged breach by the **Company** of a written contract or agreement, other than any **Employment** contract, up to the aggregate amount stated in the **Schedule** and in excess of:

- (i) any other potentially applicable cover, whether or not it actually responds; and
- (ii) the **Deductible** stated in the **Schedule**.

(c) Discovery

Insurers agree cover shall be provided to the **Company** where the discovery period is purchased in accordance with the requirements of Extension 2.3 subject to **Insurers** overall aggregate Limit of Indemnity not exceeding the Limit of Indemnity stated in the **Schedule** and the **Deductible** stated in the **Schedule**.

(d) **Emergency Defence Costs**

In the event the **Company** is unable to contact the **Insurers** or their representatives to obtain consent to authorise **Defence Costs and Expenses** following a **Claim**, then **Insurers** agree to reimburse the **Company** for emergency **Defence Costs and Expenses** incurred for a period of up to 14 days from the date the **Claim** was first made up to the amount stated in the **Schedule**.

(e) **Fidelity**

The **Insurers** shall indemnify the **Company** for any direct loss of money or other property belonging to the **Company** first discovered by the **Company** and notified to the **Insurers** during the **Period of Insurance** arising from the dishonest, fraudulent, criminal or malicious act(s) or omission(s) of any **Employee**. Such indemnity shall only apply in respect of losses resulting solely and directly from such act(s) or omission(s) committed by any **Employee** with the manifest intent to cause loss to the **Company** or to make an improper financial gain for themselves or for an identified third party, provided that:

- (i) The **Company** will not be indemnified for any loss of money or other property resulting from dishonest, fraudulent, criminal or malicious act(s) or omission(s) perpetrated after the **Company** could reasonably have discovered or suspected improper conduct on the part of the relevant **Employee**.
- (ii) No indemnity shall be provided to any person committing or colluding in any dishonest, fraudulent, criminal or malicious act(s) or omission(s).
- (iii) Any monies which but for such dishonest, fraudulent, criminal or malicious act(s) or omission(s) would be due to such person from the **Company** or any monies of such person held by the **Company** shall be deducted from any amount payable under this extension.
- (iv) **Insurers** aggregate Limit of Indemnity shall not exceed the Limit of Indemnity stated in the **Schedule** and be in excess of:
 - any other potentially applicable cover, whether or not it actually responds; and
 - the **Deductible** stated in the **Schedule**.

(f) **Pension and Employee Benefit Schemes**

The **Insurers** shall pay on behalf of the **Company**, **Loss** including **Defence Costs and Expenses** arising from a **Wrongful Act** committed by the **Company** in their capacity as administrators of any **Pension/Employee Benefit Scheme**.

- any other potentially applicable cover, whether or not it actually responds; and
- the **Deductible** stated in the **Schedule**.

7.3 Definitions

(a) **Claim**

A demand made of or allegation of a right against, the **Company** which is communicated to the **Company**. 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, provided that all such related or connected **Claims** are made during the same **Period of Insurance** or the discovery period if applicable.

(b) **Defence Costs and Expenses**

Legal costs and expenses incurred by the **Company** with the prior written and continuing consent of the **Insurers**. It does not include the **Company's** own costs and expenses (including salaries) or any value attributable to the time spent by the **Company** or any **Director** or **Employee** in dealing with a **Claim**.

(c) **Deductible**

The first part of each and every amount payable by **Insurers** under this **Policy** which shall be responsibility of the **Company** to pay before the **Insurers** shall have any liability to indemnify under this **Policy**.

(d) Investigation

A formal investigation, enquiry or request for information of or attendance by the **Company** initiated by a third party with a legal right other than the **Company** authorised so to compel the **Company** for the purpose of evaluating the conduct of the **Company**. Investigation does not include a risk management visit or equivalent by the regulator of the **Company**.

(e) Identity Theft Claim

A **Claim** made by a third party to enforce an agreement entered into with another person or entity fraudulently representing themselves as the **Company** in connection with the **Company** business notified to **Insurers** during the **Period of Insurance**.

(f) Public Relations Costs

Reasonable fees, costs and expenses of the public relations consultants incurred by the **Company** with the prior written consent of the **Insurers** to be given at their absolute discretion where it is satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on the **Company's** reputation from a **Claim** first made against the **Company** during the **Period of Insurance**.

(g) Wrongful Act

An actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by the **Company**.

7.4 Limit of Indemnity

(a) The Limit of Indemnity is the maximum amount payable by the **Insurers** under this Extension for the **Period of Insurance** (including any discovery period) irrespective of the number of **Claims** and/or the number of claimants and/or the number of **Company(ies)** or **Subsidiary(ies)**. 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, Limit of Indemnity, Exclusions and other provisions of this **Policy**.

(b) The Limit of Indemnity for this Extension shall be the amount stated in the **Schedule** .

(c) Any aggregate shown in the **Schedule** shall apply as part of and where paid, in whole or in part, erode the Limit of Indemnity.

(e) The Limit of Indemnity shall be the maximum the **Insurers** 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 shall include all **Defence Costs and Expenses Investigation Costs and Expenses, Criminal Defence Costs and Expenses, Pollution and Contamination Defence Costs and Expenses and Public Relations Costs**.

(f) In the event a **Loss** becomes payable to both the **Company** and a **Director**, only one single combined aggregate Limit of Indemnity shall be payable by **Insurers** and once exhausted **Insurers** shall have no further liability, except for the additional aggregate Limit of Indemnity contained in the Additional Limit (clause 2.1).

7.5 Exclusions

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

(a) Asbestos

Manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss or in respect of that part of any property insured by this **Policy** which consists of asbestos.

(b) Breach of Contract or Agreement

Any actual or alleged breach of contract or agreement, either oral or written, except to the extent as provided above in **Defence Costs and Expenses for Breach of Contract** clause 7.2(b).

(c) Breach of Copyright

Any actual or alleged plagiarism or breach of copyright or trademark, patents, database rights, registered design or design rights except to the extent as provided above in **Defence Costs and Expenses for Breach of Contract** clause 7.2(b).

(d) Death or Bodily Injury

Bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, except in respect of **Criminal Defence Costs and Expenses**.

(e) Documents or Data

Any repair, replacement or reconstitution cost of any Document or Data, directly or indirectly occasioned by any government or public or local authority action or order or resulting from wear or tear, the action of vermin, gradual deterioration or magnetic flux or loss of magnetism (except where caused by lightning).

(f) 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. Other than as described in Extensions 7.2(f) **Pension and Employee Benefit Schemes**;

(g) Employers Liability

Any breach of any obligation owed by the **Company** as an employer to any **Employee** or former **Employee** or applicant for employment;

(h) Employment Practices

An Employment Practices Wrongful Act.

This Exclusion shall not apply to an **Employment Practices Wrongful Act** covered under the Employment Practices Liability Extension where it has been purchased by the **Company** and appears in the **Schedule**.

(i) Fidelity

In respect of Fidelity extension 7.2 (e):

- (i)** accounting or arithmetical error or omission or unexplained shortage;
- (ii)** default or non-payment of any loan or other credit arrangement;
- (iii)** expenses incurred in establishing the amount of any direct loss of money or other property;
- (iv)** loss of interest, loss of profit or any other loss not directly consisting of loss of money or other property belonging to the **Company**;

(j) Information Technology

Any of the following:

- (i)** the failure of any computer or other electronic processing device or of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the way expected or intended;
- (ii)** the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance.

(k) Insolvency

The insolvency or bankruptcy of the **Company**.

(l) **Joint Venture**

Any association or joint venture conducted with any third party other than in respect of any **Claim** or circumstance arising from an **Employment Practices Wrongful Act**, provided that such **Claim** or circumstance emanates from a wholly independent third party.

(m) **Manufacture, Supply, Sale of Goods**

Any **Claim** based upon or arising out of the manufacture, sale, supply, installation or maintenance of any products or goods.

(n) **Price Fixing**

Any breach of regulatory, statutory or common law aimed at preventing monopolies, price discrimination, fixing of prices or other unfair trade practices.

(o) **Related Companies**

Any **Claim** brought by or on behalf of the **Company**, or any parent or **Subsidiary** company or any person having a financial, executive or controlling interest in the **Company** (unless the financial interest is less than 5%) or by or on behalf of any entity controlled or managed by the **Company** or where the **Company** has greater than a 5% financial interest or where the **Company** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred.

(p) **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 **Insurers** may at their 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.

(q) **Terrorism**

Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

This Exclusion also applies to any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

In the event that any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

(r) **Trading Losses**

Any trading losses or trading liabilities incurred by the **Company** or any business managed by or carried on by or on behalf of the **Company**.

(s) **United States of America and/or Canada**

Any **Claim**, allegation, proceeding or **Investigation** brought in the United States of America (USA) or Canada, including the enforcement outside the USA or Canada of any judgment, order, award or settlement made within the USA or Canada or which arises from or is connected, directly or indirectly, with:

(i) any event, occurrence or activity of any sort within the USA or Canada;

(ii) the holding of or dealing in securities listed or traded on any USA or Canadian Exchange or any other form of assets, tangible or intangible in the USA or Canada,

(iii) activity in the USA or Canada of any parent, **Subsidiary**, associated company, joint venture or special purpose vehicle or company whether or not registered in the USA or Canada.

(t) **War**

War, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

8 Employment Practices Liability – Extension

This extension is subject to the Definitions, Exclusions and Conditions of this **Policy** including the Corporate Liability Extension. Additional Definitions, Exclusions and Conditions apply to this Extension only.

8.1 Operative Clause

(a) Employment Practice Liability

The **Insurers** will pay all **Loss** that the **Company** is legally liable to pay.

Trigger:

for a **Claim** against the **Company** for an **Employment Practices Wrongful Act** provided that the **Claim** is first made against the **Company** during the **Period of Insurance**.

(b) Defence and Investigation Costs

The **Insurers** will pay on behalf of the **Company**:

- (i) **Defence Costs and Expenses** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under 8.1 (a);
- (ii) **Defence Costs and Expenses** in the investigation of any circumstance(s) notified to the **Insurers** under the notification condition which is or are likely to give rise to a **Claim**;
- (iii) **Investigation Costs and Expenses**.

8.2 Exclusions

The **Insurers** shall not have any liability under this **Policy** for or directly or indirectly arising out of or in any way connected with:

(a) Non Consulted Dismissal

Any **Claim** arising from actual or threatened redundancy, dismissal or the suspension of any **Employee** where the **Company** did not consult and follow the advice of a properly qualified human resource person or employment solicitor prior to the actual or threatened redundancy, dismissal or suspension.

(b) Liability of Others

Any **Claim** arising from someone else's liability connected to temporary employment which the **Company** is legally liable to assume under a contract or agreement, either oral or written. Except for a **Claim** that would have resulted in the absence of such agreement or contract.

(c) United States of America and/or Canada

Any **Claim**, allegation, proceeding or **Investigation** brought in the United States of America (USA) or Canada, including the enforcement outside the USA or Canada of any judgment, order, award or settlement made within the USA or Canada or which arises from or is connected, directly or indirectly, with:-

- (i) any event, occurrence or activity of any sort within the USA or Canada,
- (ii) the holding of or dealing in securities listed or traded on any USA or Canadian Exchange or any other form of assets, tangible or intangible in the USA or Canada,
- (iii) activity in the USA or Canada of any parent, **Subsidiary**, associated company, joint venture or special purpose vehicle or company whether or not registered in the USA or Canada.

(d) Any **Claim** arising from the **Company's** failure to act in accordance with any Trade Union agreement or collective bargaining agreement.

(e) Any **Claim** arising from the **Company's** failure to act in accordance with any minimum wage legislation.