

Directors and Officers Liability Section

Definitions

Acknowledged Insured vs. Insured Claim

Any **Claim**:

- a** brought or maintained by an **Insured Person** alleging an **Employment Practice Wrongful Act**;
- b** brought or maintained by an insolvency practitioner or the equivalent in any other jurisdiction directly or derivatively without the solicitation, voluntary assistance participation or co-operation of any **Insured Person** or any **Outside Entity's** directors or officers unless legally compelled to do so;
- c** brought or maintained by an **Insured Person** for contribution or indemnity if the **Claim** directly results from another **Claim** covered under this **Section**;
- d** brought or maintained by way of a shareholder derivative action on behalf of a **Company** or **Outside Entity**, which is brought without the solicitation, voluntary assistance, participation or co-operation of any **Insured Person** or any **Outside Entity's** directors or officers unless legally compelled to do so;
- e** brought or maintained by a **Past Insured Person**;
- f** brought or maintained by an **Insured Person** acting pursuant to **Whistleblowing Legislation**; or
- g** for the sole purpose of enforcing against such **Insured Person** a judgement from another jurisdiction.

Change of Control

- a** The **Policyholder's** merger with or consolidation into any other company;
- b** a management buy out;
- c** the sale of all or the majority of the **Policyholder's** assets to any person or company acting alone or in concert; or

- d** any person or company acting alone or in concert:
 - i** acquiring ownership or control or assuming control pursuant to written agreement with other shareholders of more than 50% of the voting rights in the **Policyholder** and/or more than 50% of the outstanding **Securities** representing the present right to vote for the election of the board of directors of the **Policyholder** and/or assuming the right to appoint or remove the majority of the board of directors (or equivalent position) of the **Policyholder**; or
 - ii** acquiring the right to receive 50% or more of the income of the **Policyholder** on a distribution by a company of all its income or a majority of its assets on a winding-up.

Claim

The earliest of any:

- a** written demand against an **Insured Person** for a **Wrongful Act**;
- b** civil or criminal proceedings (including but not limited to any **Manslaughter Allegation** or **Extradition Proceedings**) against an **Insured Person** for a **Wrongful Act**; or
- c** formal administrative proceedings or **Investigation** concerning the **Wrongful Act** of an **Insured Person**.

Company

The **Policyholder** or any **Subsidiary** thereof.

Directors and Officers Liability Section continued

Crisis Communication Consultant

Any one of the following panel companies:

- a** Hill and Knowlton;
- b** CNC; or
- c** Brunswick

which is selected and appointed by the **Policyholder**.

Alternatively, the **Policyholder** may, with the prior written consent of **the Insurer**, select and appoint any other company.

Cyber Event

Any actual, alleged or suspected:

- a** Damage to, loss, destruction, corruption, theft, or loss of operational control of data, or unauthorised or negligent processing, collection, recording, retrieval, disclosure, dissemination, or disposal of data, by the Insured, an independent contractor or an outsourced service provider of the Insured Company; and/or
- b** Unauthorised access to or use of any personal information, personal data or confidential information (other than information that is lawfully available in the public domain or to the general public unless such information which had been publicly available became uniquely identifiable through collection and/or processing) while under the care and custody, or control, of the Insured, an independent contractor or an outsourced service provider of the Insured Company; and/or
- c** Non-physical and technological failure of the Company's Computer System, or failure of technological security measures aimed at protecting data in any form. This includes, but is not limited to, any interruption of the Insured Company's business caused by such event(s); and/or
- d** Malicious direction of network traffic, introduction of malicious computer code, or other malicious attack directed at, occurring within, or utilising the Company's Computer System. This includes, but is not limited to, any interruption of the Insured Company's business caused by such event(s); and/or

- e** Interruption of the Insured Company's business caused by an accidental, unintentional or negligent act, error or omission of the Insured person in the operation or maintenance of the Company's Computer System which causes total or partial unavailability of the Company's Computer System; and/or
- f** Breach of laws and regulations pertaining to privacy and resulting from items **a** to **e** above.

For the purposes of items **a** and **c**, data includes but is not limited to personal information, personal data and/or confidential information (other than information that is lawfully available in the public domain or to the general public unless such information which had been publicly available became uniquely identifiable through collection and/or processing) in any form.

Company's Computer System means a computer system (including, but not limited, to hardware, software and/or computer programs) leased, owned or operated by or which is made available or accessible to the Insured Company or its outsource service provider(s) for the purpose of storing and processing the Insured Company's electronic data or software.

Deductible

The amount specified as such in the **Schedule**.

Defence Costs

- a** All reasonable fees, costs and legal expenses (including disbursements) incurred by or on behalf of the **Insured Person** in the investigation, defence or settlement of the **Claim** and appeal thereof; either
 - i** with the prior written consent of **the Insurer**; or,
 - ii** where it has not been practicable to obtain the prior written consent of **the Insurer**, such costs may be incurred up to a maximum aggregate amount of 10% of the **Limit of Liability** (being part of and not in addition to the **Limit of Liability**) provided that such costs are incurred reasonably and necessarily;

Directors and Officers Liability Section continued

- b** the reasonable premium for a financial instrument (including but not limited to a bond), but not collateral for the instrument, that guarantees for a period not exceeding 12 months the **Insured Person's** contingent obligation for a specified amount if required by a Court.

Defence Costs shall not include remuneration, time, expenses or any other associated benefit or overhead of any **Insured Person** and/or any **Company**.

Discovery Period

The period (as set out in the Discovery Period Extension) commencing immediately after the expiry date of the **Period of Insurance**, during which written notice may be given to the **Insurer** of a **Claim** first made during such period or the **Period of Insurance** for a **Wrongful Act** that occurred prior to the expiry date of the **Period of Insurance**.

Employment Practice Wrongful Act

Any actual or alleged: violation of employment law or regulation or any other legal provision relating to the past, present or future employment of an individual with the **Company**.

Extradition Proceedings

Proceedings against the **Insured Person** following a request for deportation, extradition or arrest warrant (including an appeal or separate proceedings to overturn an extradition order).

Financial Institution

Any bank including any merchant or investment bank, finance company, hedge fund, insurance or reinsurance company, mortgage bank, savings and loan association, building society, credit union, stock broker, investment trust, asset management company, fund manager, or any entity established principally for the purposes of carrying on commodities, futures or foreign exchange trading, financial services or any other similar entity.

Insured Person

Any natural person who was is or during the **Period of Insurance** becomes:

- a** trustee or committee member of the **Company** ;
- b** director, officer or *de facto* director of any **Company** ;
- c** any **Outside Entity Committee Member, Trustee or Director** following the exhaustion of any:
 - i** indemnification provided by the **Outside Entity**; and
 - ii** other collectible directors and officers or management liability cover issued to the **Outside Entity**

that protects the **Outside Entity Committee Member, Trustee or Director**;

- d** an employee of any **Company** whilst acting in a managerial or supervisory capacity for the **Company**;
- e** an employee of any **Company** to the extent that the employee is:
 - i** named as a defendant in connection with an **Employment Practice Wrongful Act**;
 - ii** joined as a party to any action against any person defined in **a** to **d** above.

Insured Person shall also include:

- f** the lawful spouse or civil partner (as defined in the Civil Partnership Act 2004 or any re-enactment thereof or the equivalent legislation in any other jurisdiction) of any person set out in **a** to **e** arising out of a **Wrongful Act** of such person and where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or civil partner; and
- g** legal representatives, heirs, assigns or estates of any person set out in **a** to **e** above in the event of their death, incapacity, insolvency or bankruptcy where recovery is sought solely because of a **Wrongful Act** of such person.

Insured Person shall not include insolvency practitioners or external auditors.

Directors and Officers Liability Section continued

Investigation

Any formal or official hearing, investigation or inquiry by a governmental, regulatory or judicial agency into the affairs of a **Company**, an **Outside Entity** or an **Insured Person** in their capacity as such, if an **Insured Person** receives written documentation during the **Period of Insurance** or **Discovery Period**:

- a that legally requires such **Insured Person** to attend such hearing, investigation or inquiry; or
- b in which the **Insured Person** is identified by an investigating authority as a subject of such hearing, investigation or inquiry.

An **Investigation** shall be deemed to be first made when the **Insured Person** is first so required or identified.

Investigation shall not include routine regulatory supervision, inspection or compliance reviews or any investigation which focuses on an industry rather than a **Company**, **Outside Entity** or **Insured Person** in their capacity as such.

Investigation Costs

All reasonable fees, costs and legal expenses (except remuneration, time, expenses or any other associated benefit or overhead of any **Insured Person** and/or the costs or overheads of any **Company**) incurred by or on behalf of an **Insured Person** to protect their interests with the **Insurer's** prior written consent which shall not be unreasonably withheld or delayed.

Limit of Liability

The amount specified as such in the **Schedule**.

Loss

Any:

- a Amounts which the **Insured Person** is legally liable to pay for a **Wrongful Act** (including settlements, awards of damages, awards of punitive and exemplary damages, pre and post-judgment interest on a covered judgment or award, or awards of costs).
- b **Defence Costs** incurred as a result of a **Claim** for a **Wrongful Act**

Enforceability of payment for punitive, exemplary and the multiplied portion of multiple damages shall be governed by the applicable law that most favours coverage for such damages.

With respect to civil fines and penalties imposed in relation to Section 78ff (c) (2) (B) or Section 78dd 2(g) (2) (B) of the Foreign Corrupt Practices Act, or similar legislation in any other jurisdiction, a sub-limit of £1,000,000 in the aggregate will apply (such sub-limit being part of and not payable in addition to the **Section Limit of Liability**).

Loss shall not include:

- a criminal fines and criminal penalties;
- b remuneration or employment related benefits;
- c any sum pursuant to a financial support direction or contribution notice by the Pensions Regulator;
- d taxes other than to the extent that personal liability of a director under Cover A for non-payment of corporate taxes is established by law in the jurisdiction in which the **Claim** is made and such liability constitutes **Non-Indemnifiable Loss**;
- e any amounts which may be deemed uninsurable under the law applicable to this **Section** or in the jurisdiction in which the **Claim** is brought other than in respect of amounts which are punitive, exemplary or the multiplied portion of multiple damages as specified above;
- f punitive or exemplary damages awarded for an **Employment Practice Wrongful Act**.

Manslaughter Allegation

Proceedings against an **Insured Person** for an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 or for a breach of the Health and Safety at Work Act 1974 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction).

Non-Indemnifiable Loss

Loss in respect of which a **Company** is not able to indemnify an **Insured Person** due to legal or regulatory prohibition under any statutory law, codified law or common law; or in respect of which a **Company** is unable to indemnify due to insolvency.

Directors and Officers Liability Section continued

Outside Entity

Any association, club, society, not for profit organisation or entity other than:

- a** a **Company**;
- b** an organisation, association or company that has a level II or III American Depositary Receipt Programme or is directly listed on an exchange in the **United States of America**;
- c** a financial institution including any bank, clearing house, depository institution, investment firm, investment advisor, investment manager, investment fund, stock broker, mortgage broker, credit institute, asset manager, private equity or venture capital company, insurance company or similar company

unless added by endorsement issued by **the Insurer**.

Outside Entity Committee Member, Trustee or Director

An employee, director, officer, trustee, committee member, governor or equivalent of a **Company** who, at the specific request of that **Company**, holds the position of director, officer, trustee, committee member, governor or equivalent of an **Outside Entity**.

Past Insured Person

An **Insured Person** who has retired from or voluntarily ceased to hold such office prior to the expiry date of the **Period of Insurance** other than a disqualified individual or where directly related to a **Change of Control**.

Policyholder

The association, club, society, not for profit organisation or entity specified as "The Insured" in the **Schedule**.

Post-claim Reputational Costs

All reasonable fees, costs and expenses for the professional advice of a **Crisis Communication Consultant** incurred by an **Insured Person** to mitigate the adverse effect on that **Insured Person's** reputation from a covered **Claim** first made during the **Period of Insurance** or the **Discovery Period**, if applicable, for a **Wrongful Act**, by disseminating findings made in a final judicial disposition of that claim in the **Insured Person's** favour.

Prior/Pending Litigation Date

The date specified as such in the **Schedule**.

Related Claim

Any and all **Claims** and/or **Investigations** (whether made or commenced before, during or after the **Period of Insurance**) arising out of, based upon or attributable to the same source or cause.

Reputational Crisis Costs

All reasonable fees, costs and expenses for the professional advice of a **Crisis Communication Consultant** incurred by an **Insured Person** to mitigate the adverse effect on that **Insured Person's** reputation directly in connection with any circumstance that could reasonably lead to a covered **Claim** against an **Insured Person** for a **Wrongful Act**, and any **Claim** or any **Extradition Proceedings** brought against such **Insured Person**.

Securities

Any financial or investment instrument issued by a **Company** which denotes an ownership interest and provides evidence of a debt, a right to share in the earnings of such company, or a right in the distribution of a property.

Subsidiary

Any entity or joint venture where the **Policyholder** controls either directly or indirectly through one or more other entities on or before the inception date of this **Section** either; the composition of the board of directors or more than half of shareholder voting power or share capital.

The Insurer shall only be liable for **Loss** in respect of a **Wrongful Act** whilst such entity or joint venture is a **Subsidiary**.

United States of America

The United States of America its territories and possessions and/or any state or political subdivision thereof.

Whistleblowing Legislation

The Public Interest Disclosure Act 1998 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction).

Directors and Officers Liability Section continued

Wrongful Act

Any actual or alleged misrepresentation, misstatement, misleading statement, error, omission, defamation, negligence, breach of warranty of authority, breach of fiduciary duty, **Employment Practice Wrongful Act** or any other act, including

- a with respect to shareholder derivative actions only, any proposed act;
- b any violation of the Companies Act 2006 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction); and
- c any violation of the Bribery Act 2010 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction)

by the **Insured Person** acting in their capacity as such or any matter claimed against the **Insured Person** solely because of such capacity.

Cover

The cover under this **Section** is afforded solely with respect to any **Claim** first made during the **Period of Insurance** (or **Discovery Period**, if applicable) and notified to the **Insurer** in accordance with the Claim Notification Condition.

A Directors & Officers Cover

The **Insurer** shall pay to or on behalf of an **Insured Person** any **Loss** resulting from a **Claim**.

B Company Reimbursement Cover

The **Insurer** shall pay to or on behalf of a **Company** any **Loss** resulting from a **Claim** to the extent that such **Company** has indemnified or agreed to indemnify an **Insured Person** in respect of such **Loss**.

C Investigation Additional Cover

The **Insurer** shall pay to or on behalf of an **Insured Person** (or a **Company** to the extent that such **Company** has indemnified an **Insured Person**) any **Investigation Costs** arising out of the **Insured Person's** preparation for or attendance at the hearing of an **Investigation** prior to the identification of a **Wrongful Act**.

Limit of Liability

The **Limit of Liability** is the aggregate limit of the **Insurer's** liability for the **Period of Insurance** and **Discovery Period** in respect of all **Loss** and **Investigation Costs** covered by the provisions of this **Section** and payable for all insurance covers and extensions regardless of the number of claims for indemnity under this **Section** and/or the number of **Insured Person's** who may claim and/or the number of Covers under which such claims may be made.

The **Limit of Liability** shall apply in excess of any applicable deductible(s).

Directors and Officers Liability Section continued

Extensions

The following extensions to the Cover are afforded solely with respect to any **Claim** first made during the **Period of Insurance** (or **Discovery Period**, if applicable) and notified to **the Insurer** in accordance with the Claim Notification Condition, and are also subject to the general Limits, Conditions and Exclusions of this **Section** and the **Policy**.

1 Discovery Period

In the event that this **Section** is neither renewed nor replaced with directors and officers or management liability cover, then the **Policyholder** shall have the right to a **Discovery Period** of:

- a 30 days automatically and at no additional premium; or
- b 12 months at an additional premium of 100% of the full annual premium applicable at the expiry date of this **Section**, provided that the **Policyholder** gives **the Insurer** written notice of the election of the **Discovery Period** and pays the additional premium required to **the Insurer** within 30 days of the expiry date of the **Period of Insurance**.

There shall be no right to a **Discovery Period** in the event of a **Change of Control** or where **the Insurer** has declined to renew this **Section** due to non-payment of premium.

While this **Section** does not offer the right to a **Discovery Period** if there is a **Change of Control**, **the Insurer** may, at its sole discretion, quote for a run-off **Discovery Period** of up to 72 months upon the written request of the **Policyholder**. In considering such request, **the Insurer** shall be entitled to underwrite the exposure and to extend an offer on whatever terms, conditions and limitations **the Insurer** deems appropriate.

2 Past Insured Person

The Insurer shall pay to or on behalf of a **Past Insured Person**:

- a any **Loss** arising from any **Claim** first made against such **Past Insured Person** following the expiry date of the **Period of Insurance** for a **Wrongful Act** committed before the date that they voluntarily relinquished such position; or
- b any **Investigation Costs** in connection with any **Investigation** first made against such **Past Insured Person** following the expiry date of the **Period of Insurance**,

provided such matters are notified to **the Insurer** as soon as practicable and provided that this **Section** is not renewed or replaced with any other policy affording directors and officers or management liability cover to such **Past Insured Person**.

3 Reputational Crisis Costs

If during the **Period of Insurance** the **Policyholder** or an **Insured Person** first becomes aware of:

- a a **Claim** for a **Wrongful Act**; or
- b circumstances which are reasonably expected to give rise to a **Claim** for a **Wrongful Act**;

then provided that written notice is given of such matters in accordance with terms and conditions of this **Section**, **the Insurer** will pay **Reputational Crisis Costs** and **Post-claim Reputational Crisis Costs**.

It is a condition of the **Insured Persons'** right to recover such amounts hereunder that written notice must be given to **the Insurer** within 3 working days after the appointment of the selected **Crisis Communication Consultant**.

Cover under this Extension is limited to £5,000 per circumstance or where more than one **Insured Person** is named in the **Claim** or circumstance, £5,000 per **Insured Person**.

Directors and Officers Liability Section continued

However, in no event shall the cover under this Extension exceed £50,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Liability**.

Crisis Communication Consultant panel companies (and not **the Insurer**) will during the **Period of Insurance**, upon receipt of a written request from the **Policyholder**, offer at no additional charge:

- i one private crisis communication briefing session for the benefit of directors, executive officers and invited employees of the **Policyholder**,
- ii a written manual covering core crisis communication issues

The services of a **Crisis Communication Consultant** referred to in this Extension are provided to an **Insured Person** by the **Crisis Communication Consultant** directly, as its client, without the supervision of **the Insurer**. Accordingly **the Insurer** cannot and does not make any warranties, guaranties or representations with respect to any such services or any failure to provide the same; and **the Insurer** shall have no liability for acts, errors or omissions of any **Crisis Communication Consultant** or otherwise for damages from the use of, or inability to use any such services.

4 Company Entity Cover

The following Cover is added to this **Section** where specified in the **Schedule** as being "Insured"

Cover

D Company Entity Cover

- i **The Insurer** will pay to or on behalf of the **Company** all **Loss** resulting from a **Claim** against the **Company**.
- ii **The Insurer** will pay to or on behalf of the **Company** all **Investigation Costs** in respect of an **Investigation** under the Health and Safety at Work Act 1974.
- iii **The Insurer** will pay to or on behalf of the **Company** all **Investigation Costs** in respect of an **Investigation** under the Corporate Manslaughter and Corporate Homicide Act 2007.

Provided that

- a the aggregate liability of **the Insurer** under this Cover **D** for the **Period of Insurance** and **Discovery Period** in respect of all **Loss** and **Investigation Costs** covered by the provisions of this Cover **D** regardless of the number of claims for indemnity under this Cover **D** and/or the number of entities who may claim shall not exceed a sub-limit of £500,000 or 50% of the **Section Limit of Liability** (such sub-limit being part of and not payable in addition to the **Section Limit of Liability**) whichever is the lower
- b a **Deductible** of £5,000 will apply in respect of each and every **Claim** under this Cover **D**, provided always that this **Deductible** will not apply to any **Claim** which is successfully defended

Definitions

The following Definition is amended for the purpose of Cover **D** only:

Insured Person shall include the **Company**.

The following Definition is added to this **Section** for the purpose of Cover **D** only:

Pollutants

Any substance, solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant including but not limited to asbestos or asbestos products, mycota or by-products, lead or lead containing products, smoke, vapours, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, air emissions, odour, waste water, oil, oil products, medical waste, and waste materials. Waste materials include but are not limited to recycled, reconditioned or reclaimed nuclear materials.

The following Definition is deleted and replaced by the following for the purpose of Cover **D** only:

Wrongful Act

Any actual or alleged misstatement, misleading statement, error, omission, negligence, breach of trust or breach of duty by the **Company**, but not including any **Employment Practice Wrongful Act**.

Directors and Officers Liability Section continued

Exclusions

The following Exclusions are added to the Section Exclusions of this **Section** for the purposes of Cover **D** only:

The Insurer shall not be liable for any **Loss** or any **Investigation Costs**:

10 Company Entity Cover – Competition & Restraint of Trade

arising out of, based upon, or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

11 Company Entity Cover – Securities

arising out of, based upon, or attributable to the actual or intended private placement or public offering of any **Securities** during the **Period of Insurance**.

12 Company Entity Cover – Patent Copyright

arising out of, based upon, or attributable to any actual or alleged infringement, misappropriation or violation of any copyright, patent, trade marks, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services.

13 Company Entity Cover – Contractual Liability

arising out of, based upon, or attributable to any actual or alleged contractual liability assumed by the **Company** under any contract or agreement; provided that this Exclusion shall not apply to **Defence Costs** for a **Claim** brought against the **Company**.

14 Company Entity Cover – Pollutants

arising out of, based upon, or attributable to **Pollutants**; provided that this Exclusion shall not apply to:

any **Claim** against the **Company** instigated by any shareholder or group of shareholders of the **Company** directly or in the name of the **Company** without the solicitation, voluntary assistance or participation of any **Insured Person**.

15 Company Entity Cover – Pension Scheme

arising out of, based upon or attributable to any **Claim** against any **Company** relating to any trust fund, pension scheme, profit-sharing scheme or employee benefit scheme of any **Company** or any **Outside Entity**.

16 Company Entity Cover – Claims

arising out of, based upon, or attributable to any **Claim** brought or maintained by or on behalf of any **Company**.

17 Company Entity Cover – Employment Practice Wrongful Act

arising out of, based upon, or attributable to any **Claim** against the **Company** for an **Employment Practice Wrongful Act**.

18 Company Entity Cover – Tax Obligations

arising out of, based upon, or attributable to any **Claim** against the **Company** for direct or indirect tax obligations of any kind.

19 Company Entity Cover – Libel Slander Defamation or Invasion of Privacy

arising out of, based upon, or attributable to any actual or alleged libel, slander, defamation or any form of invasion of privacy.

Directors and Officers Liability Section continued

The following Exclusions shall apply to Cover **D i** only:

20 Company Entity Cover - Bodily Injury and Property Damage

for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused, or damage to or loss of or destruction of any tangible property including loss of use thereof.

21 Company Entity Cover - Products

arising out of, based upon, or attributable to the efficiency, inefficiency, performance or lack of performance, defect, or non-compliance with health and safety standards of any products, technologies or services manufactured, produced, processed, packaged, sold marketed, distributed, advertised and/or developed by the **Company**.

Section Exclusions

The Insurer shall not be liable for any **Loss** or any **Investigation Costs**:

1 Behaviour

arising out of, based upon or attributable to:

- a** the committing of a dishonest or a fraudulent act; or
- b** the **Insured Person** gaining any personal profit, remuneration or advantage to which they were not legally entitled.

This Exclusion shall only apply to an **Insured Person** if such behaviour is established by:

- i** a final decision of a court, tribunal or regulator in the underlying proceedings; or
- ii** written admission of the **Insured Person**.

2 Prior Claims/Circumstances

arising out of, based upon or attributable to:

- a** any **Claim, Investigation** first made or commenced prior to the inception date of this **Section** including any **Related Claim** thereto irrespective of when it arises; or
- b** circumstances which have been notified under any other policy or certificate of insurance providing management liability cover and which attaches prior to the inception date of this **Section**.

3 Prior and Pending Litigation

arising out of, based upon, or attributable to:

- a** any legal or arbitral proceeding involving any **Company** or **Outside Entity** or any **Insured Person** initiated prior to, or pending at the **Prior/Pending Litigation Date**; or

Directors and Officers Liability Section continued

- b** any fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or alleging or deriving from the same or essentially the same facts, or that has the same source or cause as the matters alleged in such litigation;

regardless of the legal theory upon which the **Claim** against the **Insured Person** is predicated.

4. Trustees

arising out of, based upon or attributable to any **Claim** against an **Insured Person** in their capacity as:

- a** a trustee or fiduciary under law; or
- b** an administrator

of any trust fund, pension scheme, profit-sharing scheme or employee benefit scheme of any **Company** or any **Outside Entity**.

5 Bodily Injury and Property Damage

for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused, or damage to or loss of or destruction of any tangible property including loss of use thereof.

This Exclusion shall not apply to:

- a** **Defence Costs** for **Non-indemnifiable Loss** of any **Insured Person** who is a natural person or;
- b** mental anguish or emotional distress or disturbance in respect of an **Employment Practice Wrongful Act**.

6 Insured vs. Insured

arising out of, based upon or attributable to any **Claim** brought or maintained by, on behalf of or at the instigation of any **Company**, **Insured Person**, **Outside Entity** or any of their respective directors or officers.

This Exclusion shall not apply to an **Acknowledged Insured vs. Insured Claim** or **Defence Costs**.

7 Offering of Securities

arising out of, based upon, or attributable to any public offering of any **Securities** during the **Period of Insurance**, provided that this Exclusion shall not apply to debt offerings anywhere in the World.

8 Professional Services

in connection with any **Claim** alleging, arising out of, based upon or attributable to the **Company** or an **Insured Person's** performance of or the failure to perform professional services for others, or any act, error or omission relating thereto.

9 Outside of the United Kingdom

in connection with any **Claim**

- a** arising out of, based upon or attributable to or as a consequence of any **Wrongful Act** committed outside the United Kingdom; or
- b** in respect of any action brought or maintained outside the jurisdiction of the United Kingdom; or
- c** in respect of any action brought or maintained within the jurisdiction of the United Kingdom to enforce a foreign judgement, whether by reciprocal agreement or otherwise.

10 Cyber Event

arising out of, based upon or attributable to any **Cyber Event**.

Directors and Officers Liability Section continued

Section Claims Conditions

1 Circumstances

If during the **Period of Insurance** an **Insured Person** first becomes aware of circumstances which are reasonably expected to give rise to a **Claim** under this **Section**, then the **Policyholder** or any **Insured Person** may give notice thereof to **the Insurer** in the manner and at the address identified in the Claim Notification Condition below. In order for such notice to be effective, the notification of the circumstances must be made in writing, given during the **Period of Insurance** and include at least the following:

- a a statement that it is intended to serve as notice of circumstances of which an **Insured Person** has become aware which are reasonably expected to give rise to a **Claim**;
- b the reasons for expecting such **Claim** (including full particulars as to the nature and date of the possible **Wrongful Act**);
- c the identity of any potential claimant;
- d the identity of any **Insured Person** involved in such circumstances; and
- e the date on, and manner in which, the **Insured Person** first became aware of such circumstances.

If during the **Period of Insurance** circumstances are notified in accordance with the requirements of this Condition, then any later **Claim** arising out of, based upon or attributable to such notified circumstances shall be accepted by **the Insurer** as having been made at the same time as the circumstances were first notified to **the Insurer**.

There shall be no cover under this **Section** with respect to any such **Claim** or **Related Claim** where the circumstances have not been notified in accordance with this Condition.

2 Claim Notification

The **Policyholder** or any **Insured Person** shall give written notice to **the Insurer** of any **Claim** first made against an **Insured Person** or any **Investigation** or first made during the **Period of Insurance** (or **Discovery Period**, if applicable) as soon as reasonably practicable during the **Period of Insurance** (or **Discovery Period**, if applicable). In the event that it has not been practicable for the **Policyholder** or the **Insured Person** to give notice during the **Period of Insurance** (or **Discovery Period**, if applicable), then written notice may be given within 90 days of the expiry date of the **Period of Insurance** (or **Discovery Period**, if applicable). Such notice shall be deemed to have been given during the **Period of Insurance**.

There shall be no cover under this **Section** with respect to any **Claim** which has not been notified in accordance with this Condition.

All notifications must be in writing to:

Claims Division
Allianz Insurance plc
500 Avebury Boulevard
Milton Keynes
MK9 2XX

or by telephone to **0344 893 9500**
(lines are open 9am to 5pm Monday to Friday)

3 Defence and Settlement

It shall be the duty of each **Insured Person** to defend any **Claim** made against it. **The Insurer** shall be entitled to participate fully in the investigation, defence and negotiation of any settlement of any **Claim** that involves or appears reasonably likely to involve **the Insurer**. In respect of any **Claim** brought or maintained by, on behalf of or at the instigation of any **Company, Insured Person, Outside Entity** or any of their respective directors or officers other than an **Acknowledged Insured vs. Insured Claim**, the **Insurer** shall have the right (but not the duty) to control the investigation, defence and negotiation of any settlement of such **Claim**.

Directors and Officers Liability Section continued

Other than as provided in Definitions **Defence Costs** **a ii**, no **Defence Costs** shall be incurred without the prior written consent of **the Insurer**. Such consent shall not be unreasonably withheld or delayed.

The Insurer shall pay covered **Defence Costs** to or on behalf of the **Insured Person** on an as incurred basis prior to final disposition or adjudication of the **Claim** upon receipt of sufficiently detailed invoices. However, any such payments made by **the Insurer** which are subsequently determined not to be covered by this **Section** shall be returned by the **Policyholder** or **Insured Person** to **the Insurer** on demand and the **Policyholder** shall also be jointly and severally liable with the **Insured Person** to make such payment to **the Insurer** except in the case of **Non-indemnifiable Loss**.

The **Insured Person** shall assert all appropriate defences and cross claims for contribution, indemnity or damages. The **Insured Person** shall not admit liability for or settle or attempt to settle any **Claim** without the prior written consent of **the Insurer**. Such consent shall not be unreasonably withheld or delayed.

The **Insured Person** shall at its own cost and in a timely fashion provide to **the Insurer** all information and assistance as **the Insurer** may reasonably require.

4 Related Claims

If during the **Period of Insurance** (or any applicable **Discovery Period**) a **Claim** or **Investigation** is notified in accordance with the requirements of this **Section**, then any **Related Claim** made after expiry of the **Period of Insurance** (or the applicable **Discovery Period**) shall be accepted by **the Insurer** as having been:

- a** made at the same time as such notified **Claim**, **Investigation** was first made; and
- b** notified at the same time as such notified **Claim**, **Investigation** was first notified to **the Insurer**.

All **Related Claims** shall be deemed to be one single matter and deemed to be made at the same time as the first of such **Related Claims** was made or is deemed to have been made.

5 Dispute Resolution

Where, following receipt by **the Insurer** of all information reasonably required to provide such decision:

- a** a final decision has been given by **the Insurer** regarding any aspect of this **Section** or any matter relating to cover hereunder;
- b** that decision is disputed between **the Insurer** and an **Insured Person**; and
- c** such dispute cannot be resolved within 14 days of the date on which such decision is communicated to the **Insured Person** or its insurance broker,

the dispute shall be referred to arbitration by either party under The Insurance & Reinsurance Arbitration Society ("A.R.I.A.S (UK)") Arbitration Rules (save as set out below).

The Arbitration Tribunal (the "Tribunal") shall consist of three arbitrators, one to be appointed by an insured party involved in the arbitration, one to be appointed by **the Insurer** and the third to be appointed by the two appointed arbitrators. The third member of the Tribunal shall be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator.

The arbitrators shall be persons (including those who have retired) with not less than ten years' experience of insurance within the industry or as lawyers or other professional advisers serving the industry.

Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then, upon application, A.R.I.A.S (UK) shall appoint an arbitrator to fill the vacancy. At any time prior to such an appointment by A.R.I.A.S (UK) the party or arbitrators in default may make such appointment.

Directors and Officers Liability Section continued

The Tribunal may at its sole discretion make such orders and directions as it considers necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions. The seat of arbitration shall be London, England and the law governing the arbitration shall be the law of England & Wales.

6 Allocation

If an **Insured Person** incurs any **Loss** arising out of a **Claim** or any **Investigation Costs** in connection with an **Investigation** that includes both covered and non-covered matters or that is made against both covered and non-covered parties, then the **Insured Person** and **the Insurer** shall use their best efforts to agree upon a fair and proper allocation of the proportion of the **Loss** or **Investigation Costs** covered hereunder, having regard to the relative legal and financial exposures.

If an allocation cannot be agreed between the **Insured Person** and **the Insurer**, then the parties agree that it shall be determined, having regard to the relative legal and financial exposures, by a Queens Counsel to be mutually agreed upon, or in default of agreement to be nominated by the Chairperson of the Bar Council. Such Queens Counsel shall act as an expert and not an arbitrator and their determination shall be based upon the written submissions of the parties and shall be final and binding on the parties. There shall be no obligation on the Queens Counsel to provide reasons unless specifically requested by the **Insured Person** or **the Insurer**.

The costs of any reference to expert determination under this Condition shall be borne equally by both the **Insured Person** seeking the determination and **the Insurer**.

7 Priority of Payment of Claims

If **the Insurer** is liable to make any payment for **Loss** or **Investigation Costs** covered under this **Section**, then at the time that such payment is due **the Insurer** will (subject always to the **Limit of Liability**):

- a first, seek to agree with the **Insured Person** and/or **Company** entitled to such payment to pay any **Loss** and **Investigation Costs** for which cover is provided to a natural **Insured Person**;
- b thereafter, where **Loss** or **Investigation Costs** remain for which cover is provided to a **Company**, **the Insurer** may request the **Policyholder** to elect in writing:
 - i to stipulate the order and the amounts in which such **Loss** or **Investigation Costs** are to be discharged; or
 - ii to receive such balance to be held on behalf of any **Company** who has incurred such **Loss** or **Investigation Costs**.

In the event that no such agreement can be reached, **the Insurer** shall make payments as they fall due under this **Section** without regard to this Condition.

In the event that the **Company** becomes insolvent, this Condition shall not relieve **the Insurer** of the obligation to seek to agree to prioritise payment of **Loss** or **Investigation Costs** under this **Section**.

Subject to the **Limit of Liability**, payment pursuant to this Priority of Payment of Claims Condition shall fully discharge **the Insurer** from its obligations under this **Section**.

Directors and Officers Liability Section continued

8 Subrogation

In the event of a payment under this **Section**, the **Insurer** shall be subrogated to all applicable rights of recovery of the **Policyholder** and any **Insured Person** in respect of such payment. In addition, the **Policyholder** and **Insured Person** shall execute all and any documentation and undertake any action necessary to enable the **Insurer** to bring a recovery action or suit (at the **Insurer's** option) in the name of the **Insurer** or (as applicable), the **Policyholder** or **Insured Person**. Any recovery received shall first be applied against any payment made by the **Insurer** with any balance remaining thereafter being remitted to or retained by the **Policyholder** or **Insured Person**.

The **Insurer** shall not exercise any right of subrogation against an **Insured Person** unless it is established that such **Insured Person** has committed a deliberate criminal act or obtained any profit or advantage to which such **Insured Person** was not legally entitled in accordance with Exclusion 1.

Section General Conditions

1 Severability

For the purposes of determining the availability of coverage under this **Section** (including the application of any Exclusion), no fact pertaining to, knowledge possessed by, or conduct of one **Insured Person** shall be imputed to any other **Insured Person**.

2 Non-Avoidance

The **Insurer** shall not avoid this **Section** or any severable part of the **Section** or exercise any other legal remedy on the grounds of misrepresentation or non-disclosure, save in the case of fraudulent misrepresentation or fraudulent non-disclosure.

If there has been fraudulent misrepresentation or fraudulent non-disclosure, then the **Insurer** shall be entitled to avoid this **Section** *ab initio* with respect to:

- a an **Insured Person** who has fraudulently misrepresented or fraudulently non-disclosed material information prior to the conclusion of this contract; or

- b cover for the **Company** under Cover **B**, Cover **C** and Cover **D** (where operative) where the fraudulent misrepresentation or fraudulent non-disclosure was made by the chief executive officer and/or the chief financial officer and/or the chief operating officer and/or the chief risk officer or equivalent position of that **Company** or of the **Policyholder**.

3 Change of Control

The **Insurer** shall not be liable for any **Loss** or any **Investigation Costs** arising out of, based upon or attributable to a **Wrongful Act** committed after a **Change of Control** or in respect of any **Company** when an administrator, liquidator or receiver (or the equivalent in any jurisdiction) is appointed to such **Company**.

4 Assignment

This **Section** and any rights under or in respect of it cannot be assigned by the **Policyholder** or any **Insured Person** without the prior written consent of the **Insurer** and any assignment in breach of this Condition shall be null and void.

5 Governing Law and Jurisdiction

This **Section** shall be governed by the laws of, and subject to the exclusive jurisdiction of the Courts of England and Wales.

6 Contracts (Rights of Third Parties) Act 1999

This **Section** is not intended to confer any directly enforceable benefit upon any third party other than a **Company** or an **Insured Person** and no other third parties shall acquire any rights in relation to this **Section** under the Contracts (Rights of Third Parties) Act 1999, or any re-enactment thereof, to enforce any term of this contract or otherwise.

7 Plurals, Headings and Titles

The descriptions in the headings and titles of this **Section** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. Words that are not specifically defined in this **Section** have the meaning normally attributed to them.

Directors and Officers Liability Section continued

8 Deductible

A **Deductible** shall apply with respect to each and every **Claim** other than for **Non-indemnifiable Loss**.

In the event that the **Policyholder** and/or the relevant **Subsidiary** does not indemnify an **Insured Person**, **the Insurer** shall advance the **Loss** covered by the provisions of this **Section** to such **Insured Person**. However, any applicable **Deductible** shall then become immediately payable by the **Policyholder** and/or the **Subsidiary** to the **Insurer**.

9 Other Insurance

Unless otherwise required by law, cover under this **Section** is provided only as excess over any other valid and collectible insurance, unless such insurance is written as specific excess insurance over the **Limit of Liability**.

Other insurance shall be regarded as valid and collectible if there is an entitlement to indemnity thereunder in respect of **Loss** covered under this **Section**, or if there would be such an entitlement to indemnity but for the existence of this **Section** and/or but for any provision in such other policy to the same or similar effect as General Condition 9 of this **Section**.

10 Sanctions

This **Section** does not provide any cover or benefit for any business or activity to the extent that

- i such cover or benefit and/or
- ii such business or activity

would violate any applicable economic or trade sanction law or regulations of the UN and/or the EU/EEA and/or any other applicable national economic or trade sanction law or regulations.

11 Administration

The **Policyholder** shall act on behalf of itself and each and every **Subsidiary** and each and every **Insured Person** with respect to:

- a **Claim** notifications;
- b the necessary notifications regarding any new **Subsidiary**;
- c the payment of the premium and any additional premiums and the receipt of return premiums that may become due under this **Section**;
- d the receipt and acceptance of any endorsements issued by **the Insurer** to form part of this **Section**; and
- e the exercising or declining of any right to a **Discovery Period**.