

Directors & Officers Liability Section

Definitions

Acknowledged USA Insured vs. Insured Claim

Any Claim:

- a** 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;
- b** 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 cooperation of any **Insured Person** or any **Outside Entity's** directors or officers unless legally compelled to do so;
- c** brought or maintained by a **Past Insured Person**.

Additional Costs

Reasonable costs, incurred by the **Insured** after a waiting period of 48 hours, as a result of a covered **Loss**, provided that these following costs are beyond usual operational costs and necessary to the restoration of the normal course of operations of the **Insured's Business**:

- a** renting fee for temporary replacement of equipment and temporary additional **Location**;
- b** costs for additional external workforce and overtime **Employees**;
- c** costs related to transportation of equipment or documents.

Approved Person

Any natural person employed by any **Company** to whom the Financial Conduct Authority (FCA and/or the Prudential Regulation Authority (PRA) (or any predecessor or successor organisation or organisations) has given its approval, pursuant to Section 59 of the Financial Services and Markets Act 2000 (or any re-enactment thereof), to perform for such **Company** one or more of those controlled functions which were or are designated by the FCA and/or the PRA (or any predecessor or successor organisation or organisations) as "significant influence functions", or the equivalent of any such position in any other jurisdiction.

Asset and Liberty Proceeding

Any proceeding brought against an **Insured Person** by any governmental, regulatory or judicial agency seeking:

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

Business

Business description stated in the Schedule.

Cash & Valuables

Any of the following in physical form:

- a** currency, coins and banknotes, bullion, precious metals of all kinds and in whatsoever form and articles made there from, jewellery, gems (including uncut gem stones), precious and semiprecious stones, stamps, postal orders;
- b** cheques, drafts, bills of exchange drawn on a **Financial Institution** directing it to pay a sum certain in money;
- c** promissory notes or similar written promises;
- d** **Security Instruments**.

Directors & Officers Liability Section (continued)

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;
- 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**;
 - 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**.

Client

Any customer of an **Insured** to whom such **Insured** provides goods or services under a written contract or for a fee or other monetary consideration.

Company

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

Computer Programmes

A collection of instructions that describe a task, or set of tasks, to be carried out by a **Computer System**, including application software, operating systems, firmware and compilers.

Computer System

A computer and all input, output, processing, storage (including offline media libraries), intranets and communication facilities including related communication or open systems networks and extranets which are connected directly or indirectly to such a device.

Confiscation Order

An order of confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of any **Insured Person** in connection with an **Asset** and **Liberty Proceeding** or **Extradition Proceedings**.

Contractual Penalties

Any amount in excess of the excess applicable to Extension 12 (Employee Dishonesty) incurred by and enforced against **the Insured** as a penalty pursuant to a written contract with a **Client**, to the extent necessary to restore the financial position of the **Client** to that which existed immediately prior to the occurrence of the **Criminal Act**. Provided, however that such **Criminal Act** is not committed in collusion with such **Client** nor any **Employee** of such **Client**.

Criminal Act

Any **Theft**, **Fraud**, or **Robbery** whether committed alone or in collusion with others, with the intention to cause a **Loss** specifically and directly to the **Insured** and/or to obtain an improper financial gain from the **Insured** and/or any **Client**. **Criminal Act** does not include **IT Criminal Act**.

Crisis Communication Consultant

Any one of the following panel companies:

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

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

Directors & Officers Liability Section (continued)

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.

Data

Any electronic data of a form readily usable by **Computer Programmes** within the **Insured's Computer System**.

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;
- 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**.

Discovered or Discovery

The moment when any of the **Insured's** directors and officers, partners, trustees or any member of the **Insured's** risk management department, legal department, audit department or human resources department, first becomes aware of **Criminal Acts** or **IT Criminal Acts** or reasonably suspects that **Criminal Acts** or **IT Criminal Acts** have occurred, which would cause this person to reasonably assume that a **Loss** covered under this **Section** has been or is likely to be incurred, even though the exact amount or detail of the **Loss** may not then be known.

Directors & Officers Liability Section (continued)

A single **Loss** shall be deemed to have been discovered at the time the first **Criminal Act** or **IT Criminal Act** is discovered.

Discovery Period

The period commencing immediately after the expiry date of the **Period of Insurance**, during which written notice may be given to the **Insurer** of:

- a 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**; or
- b a **Criminal Act** or **IT Criminal Act** that was committed prior to the expiry date of the **Period of Insurance**, first **Discovered** during such period or during the **Period of Insurance** and only where **Loss** arising from such **Criminal Act** or **IT Criminal Act** is not partially nor wholly covered by any other insurance policy in force after the expiry date of the **Period of Insurance**.

Employee

Any natural person who is:

- a under a contract of service or apprenticeship with the **Company**;
- b a labour master or labour only subcontractor or person supplied by any of them;
- c under a work experience or similar scheme;
- d hired or borrowed by the **Company** from another employer and working for the **Company** in connection with the **Company's** business while under the direct control or supervision of the **Company**.

For the purposes of **Extension 12** (Employee Dishonesty) only:

Any natural person who is under a contract of employment (whether full time, part-time or temporary) with the **Insured** whom the **Insured** has the right to govern and direct in the performance of their duties and whom the **Insured** compensates by salary or wages.

Employee shall also include any of the foregoing natural persons for a period not exceeding 30 days following the termination of their employment contract with or by the **Insured**, except when such termination involves an actual, alleged or suspected dishonest, fraudulent or malicious act.

If the **Insured** is unable to identify an **Employee** but proves beyond any reasonable doubt that a **Loss** must have been caused by a covered **Criminal Act** of an **Employee**, then the **Insured** shall not be required to specifically identify the **Employee** by name.

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**.

Environmental Condition

- a the actual, alleged or threatened discharge, dispersal, release or escape of pollutants (as defined by applicable local legislation), including greenhouse gases
- b any regulator direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralise pollutants (as defined by applicable local legislation), including greenhouse gases that may result in a **Non-Indemnifiable Loss** to an **Insured Person**.

Environmental Violation

Any **Claim** based upon, arising out of or attributable to an **Environmental Condition** if and to the extent such **Claim**:

- a is against an **Insured Person** for a **Wrongful Act** in connection with misrepresenting or failing to disclose information as governed by any statute, regulation, rule or common law regulating or creating liability for an **Environmental Condition**;
- b results in a **Non-Indemnifiable Loss** to any **Insured Person**.

Excess

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

Directors & Officers Liability Section (continued)

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 company, firm or organisation whose function or principle activities are regulated by the financial regulatory bodies in the territories in which it operates, including but not limited to:

any bank, clearing house, depository institution, investment firm, investment advisory, investment manager, investment fund, mutual fund, stockbroker, mortgage broker, credit institution, asset manager, private equity or venture capital company, insurance company, reinsurance company or real estate investment trust.

Financial Loss

Direct and pure financial loss sustained by the **Insured**.

Financial Loss shall not include:

- i **Property Loss** unless it is the result of a **Fraud** and/or a **Forgery**
- ii **Location** or real estate of the **Insured**
- iii **Reconstitution Costs** and **Additional Costs**

Forgery

- a the hand-written signing or endorsing of the name of a genuine natural person, or the copying of said natural person's signature, without authority and with intent to deceive, but not the unauthorised signing or endorsing in whole or in part of one's own genuine signature. A mechanically or electronically reproduced facsimile signature shall be treated the same as a handwritten signature;
- b the imitation of authentic or what purport to be authentic **Cash and Valuables**, such that the Insured is deceived on the basis of the quality of the imitation so as to believe that such **Cash and Valuables** are authentic;
- c the material alteration of **Cash and Valuables** for a fraudulent purpose.

Fraud

Any:

a Forgery of Cash and Valuables

- b only where committed by **Employees**, **Fraud** means any dishonest, fraudulent or malicious acts punishable under the criminal laws of the country where this act was committed, whether committed alone or in collusion with others, with the intention to cause a **Loss** to the **Insured** and/or to obtain an improper financial gain for the **Employee** and/or any **Third-Party** intended by the **Employee** to receive that benefit.

Benefits earned in the usual course of employment including salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions shall not constitute improper financial gain.

Insolvency Hearing Costs

All reasonable fees, costs and legal expenses (including disbursements) incurred with the **Insurer's** prior written consent, to retain legal advisors for an **Insured Person's** preparation for and attendance at any formal or official hearing in connection with the investigation or inquiry into the affairs of a **Company**, or an **Insured Person** in his capacity as such, by any insolvency administrator or receiver, bankruptcy trustee or liquidator or the equivalent under any laws of any jurisdiction where the facts underlying such hearing, investigation or inquiry may be expected to give rise to a **Claim** against such **Insured Person**.

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

Insured

The **Policyholder**, together with any **Subsidiary**, or **Plan**.

Directors & Officers Liability Section (continued)

Insured Person

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

- a** director, officer, **Non-executive Director** or *de facto* director of any **Company** or any **Approved Person** or the equivalent in any other jurisdiction;
- b** a director, officer or employee of any **Company** and who by virtue of such position is a Shadow Director as defined in section 251 of the Companies Act 2006 (or any re-enactment thereof or the equivalent legislation in any other jurisdiction) of a company;
- c** any **Outside Entity 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 Director**;
- d** a director, officer or employee of any **Company** who is a compliance committee member appointed by a **Company**;
- e** a prospective director or officer in any listing particulars, prospectus, circular or similar document issued by any **Company**;
- f** an employee of any **Company** whilst acting in a managerial or supervisory capacity for the **Company**;
- g** 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 **f** above.

Insured Person shall also include:

- h** 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 **g** 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;

- i** legal representatives, heirs, assigns or estates of any person set out in **a** to **g** above in the event of their death, incapacity, insolvency or bankruptcy where recovery is sought solely because of a **Wrongful Act** of such person;
- j** for the purpose of **Cover E** only; shall include the **Company**.

Insured Person shall not include insolvency practitioners or external auditors.

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.

Directors & Officers Liability Section (continued)

IT Criminal Act

Any **Data** or **Computer Programmes** which the **Insured** has relied upon in good faith and in the ordinary course of its business which is fraudulently, dishonestly or maliciously prepared, created, input, modified, damaged or deleted as a result of wilful, unlawful and targeted intrusions into the **Insured's Computer System** committed with the intent to cause a loss specifically and directly to the **Insured**.

Kidnap Consultant means any person or entity appointed by the **Company** with the consent of the **Insurer** to advise and respond to a **Kidnap Event**.

Kidnap Event means:

- a** the seizing, detaining or carrying away of an **Insured Person** while such **Insured Person** is acting in the course of employment by a **Company**, by force or fraud outside his country of residence, for the purpose of demanding ransom monies;
- b** any illegal holding under duress, for a period in excess of six hours, of an **Insured Person**, during its travel in the course of employment with a **Company**, on or in any aircraft, motor vehicle or waterborne vessel; or
- c** the arbitrary or capricious confinement of an **Insured Person**, while acting in the course of his employment by a **Company**, by persons acting as agents of, or with the tacit approval of, any government or governmental entity, or acting or purporting to act on behalf of any insurgent party, organisation or group that first occurs during the **Period of Insurance**.

A connected series of **Kidnap Events** will be considered one **Kidnap Event**.

Kidnap Response Costs means the reasonable fees, costs and expenses of the **Kidnap Consultant** incurred by the **Company** in response to any **Kidnap Event** anywhere in the world (excluding Colombia, Iraq, Nigeria, and the Philippines). Such fees and expenses shall include related costs for travel, accommodation, qualified interpretation, communication and payments to informants.

Location

The interior portion of any building owned or occupied by the **Insured** and in which they conduct their **Business**.

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.

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**.

Directors & Officers Liability Section (continued)

For the purposes of Extension 12 (Employee Dishonesty) only:

- a Financial Loss;**
- b Property Loss;**
- c Contractual Penalties;**
- d Additional Costs;**
- e Reconstitution Costs.**

Loss shall not include:

- i** tax, fines and penalties of any type;
- ii** any awards, bonuses, commissions, fees, pension or other employee benefits, salaries or wages paid or payable by **the Insured** and earned in the normal course of employment.

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-executive Director

Any natural person who serves as a Non-executive Director of the **Policyholder** at the inception date of the **Period of Insurance**.

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.

Outside Entity

Any organisation, association joint venture or company 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 Director

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

Period of Insurance

Period from the effective date to the renewal date as shown in the **Schedule**.

Personal Expenses

Any

- a** schooling cost for dependant non-adults;
- b** monthly primary housing mortgage payments or rental cost;
- c** utilities cost, including private water, gas, electricity, phone and internet services;
- d** personal insurance premiums, including Property, Life and Health policies,

to be paid directly by **the Insurer** to a third party service producer of an **Insured**, provided that:

- i** the services were contracted by **the Insured Person** prior to the **Confiscation Order** and are owed by such **Insured Person**,
- ii** the expenses are in excess of any personal allowance granted in connection with the **Confiscation Order**; and

Directors & Officers Liability Section (continued)

- iii the expenses fall due during the period beginning 30 days after the date of the **Confiscation Order** and ending when the **Insured Person** has obtained its discharge or revocation, but in no event shall such period be longer than 12 months.

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

Plan

Any pension scheme, benefit plan or programme, established, maintained or sponsored solely by an **Insured** for the benefit of its employees.

Policyholder

The entity specified as "**The Insured**" in the **Schedule**.

Pollutants (for the purpose of Cover E only)

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.

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**.

Property

Any tangible assets (including machinery, physical vaults, safes, lockers, equipment, inventory, computers and data storage media) but only to the extent that it has an intrinsic value; which is in the **Location** of the **Insured**. **Property** does not include **Cash & Valuables**, **Location** or real estate of the **Insured**.

Property Loss

Any physical damage to or destruction or physical loss of **Property** but not loss of **Property** due to **Fraud** and/or **Forgery**; or any loss arising thereof.

Reconstitution Costs

The cost of labour for the actual transcription or copying in order to reproduce **Data** or **Computer Programmes**, including the cost of purchasing a software licence necessary to reproduce such **Data** or **Computer Programmes**. Where **Data** or **Computer Programmes** were purchased from a **Third Party**, **Reconstitution Costs** means the cost of repurchasing the **Data** or **Computer Programmes** from a **Third Party**, if less than the cost of transcription or copying.

Related Claim

Any and all **Claims** and/or **Investigations** and or **Self Report 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**.

Retaliation

Any retaliatory treatment against an **Employee** of a **Company** in respect of whistle-blowing or on account of such **Employees** exercise or attempted exercise of their legally protected rights.

Directors & Officers Liability Section (continued)

Robbery

The taking of **Cash & Valuables** or **Property** in the possession of another person or entity, by force or intimidation.

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.

Security Instruments

All negotiable and non-negotiable instruments representing a share, participation or other interest in the property (real or personal) or enterprise of the **Insured**, and other valuable papers, including books of account and other records used by the **Insured** in the conduct of its business, such as bonds, debentures, shares, stocks or other equity or debt security.

Self Report

The actual report to any governmental, regulatory or judicial agency by any **Insured Person** or **Company** pursuant to an obligation to inform such agency of matters giving rise to actual or potential regulatory issues, where failure to give such notification or delay in notifying, can itself give rise to enforcement consequences.

Self Report Investigation

An internal investigation by or on behalf of the **Company** or an **Outside Entity** into the affairs of a **Company**, an **Outside Entity** or an **Insured Person** in their capacity as such in response to a direct regulatory, judicial or governmental request following a **Self Report**, if an **Insured Person** during the **Period of Insurance** or **Discovery Period** is first required to attend such investigation or first becomes aware that they are the subject of such investigation.

A **Self Report Investigation** shall be deemed to be first made when the **Insured Person** is first so required or becomes aware.

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**.

Theft

The felonious taking and removing of someone's **Property** or **Cash & Valuables** with intent to deprive the rightful owner of it.

Third Party

Any natural or legal person except **the Insured** or any **Employee** or director and officer of **the Insured**.

Trade Secret

The information, including a formula, compilation, pattern, programme, device, method, process or technique that derives independent economic value, actual or potential, from not being generally known and not readily ascertainable through proper means by another person who can obtain economic advantage from its disclosure or use.

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 & Officers Liability Section (continued)

Wrongful Act

(other than in respect of Cover E)

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.

(For the purposes of Cover E the following definition will apply):

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**

Cover

The cover and extensions 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 and are also subject to the general Limits, Conditions and Exclusions of this **Section** and the **Policy**.

Coverage under this **Section** is provided anywhere in the world, where legally permitted, unless specified otherwise in the **Schedule**, subject to all the terms and conditions of this **Section**.

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 Non-Executive Director Cover

The **Insurer** shall pay to or on behalf of a **Non-executive Director** any **Loss** resulting from a **Claim** up to £250,000 but only after exhaustion of:

- i the **Limit of Liability**;
- ii all other collectible directors and officers or management liability covers whether written excess of the **Limit of Liability** or otherwise; and
- iii all other indemnification for such **Loss** available from any other source.

The **sublimit** is an aggregate amount for each **Non-executive Director** and is in addition to the **Limit of Liability**.

D Investigation Cover

(prior to the identification of a **Wrongful Act**)

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:

- i the hearing of an **Investigation** prior to the identification of a **Wrongful Act**; or
- ii a **Self Report Investigation**.

Directors & Officers Liability Section (continued)

E Company Entity Liability Cover

The **Insurer** will pay to or on behalf of the **Company**:

- i all **Loss** resulting from a **Claim** against the **Company**;
- ii all **Investigation Costs** in respect of an **Investigation** under the Health and Safety at Work etc Act 1974;
- iii all **Investigation Costs** in respect of **Investigation** under the Corporate Manslaughter and Corporate Homicide Act 2007.

The **Limit of Indemnity** shall be:

- i as specified under the Directors & Officers Limit of Indemnity up to a maximum of £5,000,000;
- ii an 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 Cover E regardless of the number of **Claims** for indemnity under this **Policy**.

An excess of £2,500 will apply in respect of each and every **Claim** under Cover E, provided always that this excess will not apply to any **Claim** which is successfully defended.

Limit of Liability

The **Limit of Liability** is the total amount payable by the **Insurer** in respect of all **Loss** and **Investigation Costs** arising from any **Related Claim** during the **Period of Insurance** and **Discovery Period** covered by the provisions of this **Section** for all insurance covers and extensions under which such **Claim** may be made. The **Insurer** shall have no liability in excess of the **Limit of Liability** regardless of the number of **Related Claims** for indemnity under this **Section** and/or the number of **Insured Persons** who may claim and/or the number of covers under which such **Related Claims** may be made.

The **Non-executive Additional Amount** shall apply in the manner set out in the Non-Executive Cover C. The Environmental Extension additional amount is £50,000 and is an aggregate limit in addition to the **Limit of Liability**.

The **Limit of Liability** shall apply in excess of any applicable **Excess(es)**.

Extensions

1 Automatic New Subsidiary Cover

If an entity becomes a **Subsidiary** during the **Period of Insurance**, such entity shall be covered under this **Section** as such with effect from the date on which it became a **Subsidiary** unless such entity:

- a has total assets that exceed 50% of the **Policyholder's** total assets and/or
- b has any of its **Securities** listed on any exchange;

In such case the **Company** shall provide the **Insurer** with full information in respect of such entity and pay an additional premium and agree any amendment to the provisions requested by the **Insurer** to obtain cover as a **Subsidiary** for such legal entity, provided that the **Insurer** shall not in any event be required to provide such cover unless it so decides in its sole discretion.

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

2 Management buy-out

Following a management buy-out of any **Subsidiary** and upon written instruction from the **Policyholder** prior to such event, this **Section** shall continue to provide cover for a **Wrongful Act** committed after such buy-out for a period of 45 days subject to the **Period of Insurance**.

3 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 90 days automatically and at no additional premium; or
- b 12 months at an additional premium of 50% 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**.

Directors & Officers Liability Section (continued)

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.

4 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** or **Self Report 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**.

5 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**;
- b circumstances which are reasonably expected to give rise to a **Claim** for a **Wrongful Act**;
- c any **Investigation** in to the offering and trading of the **Securities** of any **Company**,

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**.

In no event shall the cover under this Extension exceed £100,000 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.

Directors & Officers Liability Section (continued)

6 Circumstance Investigation Costs

The **Insurer** shall pay the **Investigation Costs** incurred by the **Insured Person** in the investigation of any circumstance notified to the **Insurer** in accordance with Section Claims Condition 1. Circumstances, including determining the **Insured Person's** legal position and the steps that might be appropriate to avert or minimise the risk of a **Claim**.

Cover under this Extension is sub-limited to £50,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Liability**.

7 Insolvency Hearing Costs

The **Insurer** shall pay the insolvency hearing costs of each **Insured Person**.

Cover under this Extension is sub-limited to £50,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Liability**.

8 Assets and Liberty Costs

The **Insurer** shall pay:

- a the reasonable fees, costs and expenses incurred by any **Insured Person** with respect to any **Asset and Liberty Proceeding**; and
- b **Personal Expenses** in the event of a **Confiscation Order**.

Cover under this Extension is sub-limited to £50,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Liability**.

9 Court Attendance Costs

The **Insurer** shall pay a daily rate of £300 for each day on which attendance is required in court by an **Insured** in connection with any covered **Claim**.

Cover under this Extension is sub-limited to £20,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Liability**.

10 Environmental Extension

The **Insurer** shall pay, in the aggregate, in addition to the **Limit of Liability**, **Defence Costs** incurred by any **Insured Person** for an **Environmental Violation**, up to the **Environmental Extension** additional amount of £50,000.

11 Kidnap and Ransom Cost Cover

The **Insurer** shall pay to the **Company** **Kidnap Response Costs** incurred by the **Company** in the event that during the **Period of Insurance** an **Insured Person** has first become a victim of a **Kidnap Event**.

Cover under this Extension is sub-limited to £50,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Indemnity**.

12 Employee Dishonesty

The **Insurer** shall indemnify the **Insured** for all **Financial Loss** and/or **Property Loss** sustained by any **Insured** as a direct result of any **Criminal Act**, which is first **Discovered** during the **Period of Insurance** or the **Discovery Period**, if applicable, and notified to the **Insurer** in accordance with this Section's provisions.

Cover under this Extension is sub-limited to £75,000 in the aggregate during the **Period of Insurance**, such amount being part of the **Limit of Indemnity**.

An excess of 10% of the sub-limit will apply in respect of each and every **Loss** under this **Extension**.

13 Legal Advice Helpline for Employment Practices Wrongful Act Claims

Law firm Mills and Reeve LLP shall provide **Insured Persons** with:

- a a dedicated helpline that will be staffed by a team of specialist employment solicitors;
- b bespoke, commercial advice by telephone on issues that may realistically lead to a claim for an

Directors & Officers Liability Section (continued)

Employment Practices Wrongful Act;

- c advice on drafting or reviewing documents in connection with a helpline issue; and
- d free access to a national annual programme of seminars, monthly briefing notes and a dedicated blog on changing employment law issues.

These services can be accessed by calling **01603 693369** or emailing allianzlegalsupport@mills-reeve.com

This added value service is provided by law firm Mills and Reeve LLP free of charge, subject to reasonable usage by the **Insured Persons**.

14 Waiver of Excess for Employment Practices Wrongful Act

The **Insurer** shall waive the excess that would otherwise be payable in respect of any **Claim** for an **Employment Practices Wrongful Act** provided the **Insured Person** instructs Mills and Reeve LLP to defend or advise them in response to such **Claim**.

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 or Self Report 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
- 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 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

Directors & Officers Liability Section (continued)

- b mental anguish or emotional distress or disturbance in respect of an **Employment Practice Wrongful Act**;
- c **Loss** where and to the extent personal liability is established against an **Insured Person**, but only for **Non-Indemnifiable Loss**.

5 Acknowledged USA Company vs. Insured
arising out of, based upon or attributable to any **Claim** brought or maintained in the **United States of America** by, on behalf of or at the instigation of any **Company, Insured Person or Outside Entity**.

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

6 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

No cover will be available under Extension 12 (Employee Dishonesty) in respect of:

- 7 Cyber Event**
arising out of, based upon or attributable to any **Cyber Event**.
- 8 Indirect Loss**
any **Indirect Loss** incurred by the **Insured**.

9 Confidential information, Trade Secrets and Computer Programmes

loss of or the actual or alleged plagiarism of, or **Loss** arising directly or indirectly from the accessing of, any confidential information (including but not limited to **Trade Secrets, Computer Programmes**, customer information, patents, trademarks, trade names, copyrights or any other form of intellectual property), except to the extent that any such information has been used to support or facilitate the commission of a **Criminal Act** or **IT Criminal Act** covered by Extension 12 (Employee Dishonesty).

10 Loss after Discovery

Any **Loss** as a result of any **Criminal Act** or **IT Criminal Act** committed by any **Employee** after a previous **Criminal Act** or **IT Criminal Act** committed by the same **Employee** is **Discovered**.

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

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

11 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.

12 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**.

Directors & Officers Liability Section (continued)

13 Company Entity Cover – Professional Services
for the performance or failure to perform professional services for any person or any act, error or omission relating thereto.

14 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.

15 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**.

16 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**.

17 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**.

18 Company Entity Cover – Insured vs Insured Claims
arising out of, based upon, or attributable to any **Claim** brought or maintained by or on behalf of any **Company**.

19 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**.

The following Exclusions shall apply to Cover E 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**.

Directors & 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 **Self Report Investigation** 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:

Allianz Claims
PO Box 10509
51 Saffron Road
Wigston LE18 9FP

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 & 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, Investigation** or **Self Report 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** or **Self Report Investigation** was first made; and
- b notified at the same time as such notified **Claim, Investigation** or **Self Report 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 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 & 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** or **Self Report 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.

Notwithstanding the above, if, on account of a **Claim** or **Investigation**, an **Insured Person** incurs covered **Defence Costs** or **Investigation Costs** on account of an allegation against both the **Insured Person** and a **Company**, then, if the **Insured Person** and the **Company** are being defended by the same lawyers, 100% of those covered **Defence Costs** or **Investigation Costs** shall be deemed allocated to covered **Loss**.

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 Queen's Counsel to be mutually agreed upon, or in default of agreement to be nominated by the Chairperson of the Bar Council. Such Queen's 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 Queen's 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 & 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.

- b cover for the **Company** under Cover B, Cover D and Cover E (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.

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

Directors & Officers Liability Section (continued)

8 Excess

Subject to Extension 15, an Excess 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 **Excess** 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**.