

# **DIRECTORS & OFFICERS LIABILITY INSURANCE**

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## ABOUT THE POLICY

### IMPORTANT NOTICES:

Please read these Notices carefully, they specifically constitute part of this Policy of insurance.

#### A. AUTHORISED REPRESENTATIVE

For the purposes of Policy administration, including but not limited to the handling of **Premium** and any Policy endorsement, **You** and the **Policyholder** agree that the **Policyholder** shall act on **Your** behalf.

#### B. CLAIMS MADE POLICY

This is a claims made Policy. It provides an indemnity for **Claims** first made against **You** during the **Policy Period** arising from **Wrongful Acts** whenever committed by **You** in **Your Insured Capacity**.

#### C. DEFENCE

Up until the point of any final disposition, **We** will advance **Defence Costs** once the applicable **Retention** has been exhausted, although **We** will not assume a duty to defend any **Claim**. Any **Defence Costs** incurred will be applied against the **Retention** where applicable.

#### D. DEFINITIONS

All policy definitions in this Policy appear in bold and italic text.

#### E. ENTIRE AGREEMENT

The parties to this contract have agreed that this Policy, including the **Proposal**, constitutes the entire contract.

#### F. FRAUDULENT CLAIMS

With respect to that person only, all benefit under the Policy shall be forfeited if it is established through a final judgment or any other final adjudication or any admission that a **Claim** made under this Policy is in any respect fraudulent, or if any fraudulent means or device to obtain any benefit under this Policy were used.

#### G. NOTIFICATION

**You** shall notify **Us**, during the **Policy Period**, of any circumstance reasonably expected to give rise to a **Claim**. As a Condition Precedent to **Our** liability, the notice should be in accordance with the D&O Claims Notification Form forming part of this Policy.

During the **Policy Period** or applicable **Discovery Period**, **We** will accept a **Claim** or any circumstance reasonably expected to give rise to a **Claim**, reported to **Us** in accordance with the provisions of this Policy, which is first made during the **Policy Period**.

After the **Policy Period** or applicable **Discovery Period**, **We** will accept a **Claim** or a circumstance reasonably expected to give rise to a **Claim**, if the **Claim** or circumstance relates specifically to a **Claim** first made in the **Policy Period**.

#### H. POLICYHOLDER COMPLAINTS & DATA PROTECTION

**We** are dedicated to providing a high quality service and **We** want to ensure this is maintained at all times. If **You** feel that **We** have not offered **You** a first class service please write and tell **Us** and **We** will do our best to resolve the problem.

Any query or complaint about **Your** policy should be addressed in the first instance to Manchester Underwriting Management Limited, Centennium Court, East Street, Chesham HP5 1DG

In the event that **You** still remain dissatisfied and wish to make a complaint it may be possible, in certain circumstances, for **You** to refer the matter to the Complaints Department at Lloyd's.

Their address is:

Complaints Department	Tel: 0207 327 5693
Lloyd's	Facsimile: 0207 327 5225
One Lime Street	E-mail: <a href="mailto:www.complaints@Lloyds.com">www.complaints@Lloyds.com</a>
London	
EC3M 7HA	

In the event that the Complaints Department is unable to resolve the complaint, it may be possible to refer to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.

**We** record and hold data in accordance with the Data Protection Act 1998 and for the Act, the Data Controller in relation to any data you supply is Sagicor at Lloyd's. **We** may find it necessary to pass data to other firms or businesses that supply products and services associated with this contract of insurance. Further, by accessing and updating various databases **We** may share information with other firms and public bodies.

**I. REGULATION**

Both Manchester Underwriting Management Limited and Sagicor at Lloyd's are authorised and regulated by the Financial Services Authority.

**J. REPRESENTATION AND SEVERABILITY**

In granting cover to any one of **You**, **We** have relied upon the material statements made or submitted to **Us**. This Policy is a severable Policy in respect of each of **You**. No statements or actions made or knowledge possessed by any natural person shall be imputed to any of **You** to determine any aspect of coverage available under this Policy.

**K. SEVERABLE LIABILITY**

**Our** obligations under this Policy are several and not joint and are limited solely to the extent of **Our** individual subscription and **We** shall not be responsible for the subscription of any other insurer where, for whatever reason, they fail to satisfy all or part of their obligations.

## 1 - INSURING CLAUSES

In consideration of the payment of the **Premium** and subject to all the provisions of this Policy, **We** agree with the **Company** and **You** as follows:

### A. INDIVIDUALS COVER

**We** shall pay any **Loss** on **Your** behalf to the extent that it is **Non-Indemnifiable Loss**.

### B. COMPANY REIMBURSEMENT COVER

**We** shall pay **Your Loss** on behalf of the **Company** where the **Company** is liable to indemnify **You** for such **Loss**.

## 2 – AUTOMATIC POLICY EXTENSIONS

Subject to all the provisions of this Policy, cover is automatically extended as follows:

### A. Creation of New Subsidiaries & Change of Control

**We** shall automatically extend cover to all new **Subsidiaries** created or acquired by the **Policyholder** during the **Policy Period**, except in the following circumstances, (whereby the Policy will be extended to include that **Subsidiary** for a period of 45 days from the date the **Policyholder** obtained that **Subsidiary** and thereafter the **Policyholder** may request a longer period subject to **Our** written agreement, amendment of the Policy terms and conditions and the payment of any additional premium);

(a) where the **Subsidiary** has total gross assets that exceed the **Acquisition Limit** and is incorporated or domiciled in the **USA** and / or

(b) where the **Subsidiary** has its shares publicly traded in the **USA**.

In all circumstances, **We** shall only be liable for **Loss** arising from **Wrongful Acts** whilst an entity is a **Subsidiary**.

Where the **Policyholder** undergoes a **Change in Control** during the **Policy Period**, this Policy will continue to provide cover until the expiry of the **Policy Period** but only in respect of **Wrongful Acts** prior to the effective date of the **Change in Control**.

### B. Discovery Period

If **We** decline to offer renewal terms at the end of the **Policy Period**, or the **Policyholder** refuses to renew this Policy, then both **You** and the **Policyholder** have the right to elect a **Discovery Period**, during which any **Claim** received in respect of a **Wrongful Act** that was committed or attempted prior to the expiry of the **Policy Period** shall be recognised by **Us** as if such **Claim** were made during the **Policy Period**. Such period and premium being 12 months discovery period at 75% Additional Premium;

**You**, or the **Policyholder**, must elect to purchase a **Discovery Period** in writing, within 30 days of the termination date of the Policy and must tender the additional premium within 60 days of the termination date. The additional premium is not refundable and the **Discovery Period** is not cancellable.

The right to elect a **Discovery Period** ceases in the event of a **Change of Control**; the policy being cancelled due to non-payment of premium; or if the **Policyholder** renews or replaces this Policy with, or purchases, effects or otherwise acquires, any other policy affording directors' and officers' liability insurance or similar liability cover.

C. **Non-Avoidance**

**We** agree to waive our right to avoid, rescind or annul **Your** interest in the Policy as a result of an innocent or negligent non-disclosure and/or misrepresentation.

D. **Retired Directors Cover**

If this Policy is not renewed or replaced with any other policy issued affording directors' and officers' liability cover and a **Discovery Period** is not invoked, this Policy will cover **Claims** or **Formal Investigations** commenced against any **Director**, who has voluntarily ceased to hold such office prior to expiry of the **Policy Period**, for a period of 72 months, effective from the date of such non-renewal.

E. **Spousal Coverage**

**We** will pay for **Loss** in respect of a claim first made against **Your** lawful spouse (whether such status is deemed such by reason of any statutory or common law or otherwise of any applicable jurisdiction in the world) or domestic partner during the **Policy Period** and notified to **Us** during the **Policy Period** provided such claim is made solely because of his or her status as **Your** lawful spouse or domestic partner and solely in respect of **Your Wrongful Act**.

F. **Heirs and Estates Coverage**

**We** will pay for **Loss** solely in respect of **Your Wrongful Act** in respect of a claim first made against **Your** administrators, estates, heirs, legal representatives, executors or assigns should **You** or **Your** estate be or become deceased, incompetent, insolvent or bankrupt.

G. **Bail Bond Expenses**

**We** shall pay on **Your** behalf the reasonable premium (but not to include collateral) for a bond or other financial instrument to guarantee **Your** contingent obligation for bail or equivalent in other jurisdiction in respect of a **Claim** covered under this Policy.

H. **Corporate Manslaughter Cover**

**We** shall pay **Your Defence Costs** or **Legal Representation Expenses** relating to a **Claim** or **Formal Investigation** relating to **Your** prosecution for involuntary manslaughter including constructive manslaughter or gross negligence manslaughter in relation to the business of the **Company**.

I. **Emergency Expenses**

If **Our** written consent cannot reasonably be obtained before **Defence Costs** in respect of any **Claim** or **Legal Representation Expenses** are incurred, **We** will, subject to the other terms of this Policy, give retrospective approval for such **Defence Costs** or **Legal Representation Expenses** up to 20% of the **Limit of Liability**.

J. **Loss Mitigation**

**We** shall pay on behalf the **Company** reasonable professional fees and expenses incurred with **Our** prior written consent and at our absolute discretion where **We** are satisfied those costs will mitigate or reduce the likelihood of a **Claim** for which cover would be provided under this Policy.

**K. Outside Entity Coverage**

**We** shall pay on behalf of **You** any **Loss** in your capacity as an **Outside Entity Director or Officer**. However, **We** shall not be liable under this Policy for **Loss** arising from or attributable to any **Claim** that is brought by the **Outside Entity** against **You**, except in relation to:

- (a) **Defence Costs**; or
- (b) a derivative action brought in the name of the **Outside Entity**, initiated by a shareholder provided it is not brought with the voluntary (rather than legally required) assistance, intervention or solicitation on the part of the **Outside Entity**; or
- (c) a **Claim** brought or maintained by a licensed insolvency practitioner or equivalent for the **Outside Entity**; or
- (d) a **Claim** for a contribution or an indemnity in relation to a separate claim brought by a third party, provided this third party claim is not brought with the active assistance, active intervention or active solicitation on the part of the **Outside Entity**.

**L. Prosecution Costs**

**We** shall pay on **Your** behalf as **Defence Costs** the reasonable legal fees, costs and expenses, incurred by each of **You**, to obtain the discharge or revocation of a **Judicial Order** arising from a **Claim** imposing:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of **Your** ownership of real property or personal assets;
- (b) a charge over **Your** real estate property or personal assets;
- (c) an order prohibiting **You** from holding office as a **Director**;
- (d) a court order imposing restriction of **Your** liberty;
- (e) **Your** deportation following revocation of otherwise proper, current and valid immigration status for any reason other than **Your** conviction of a criminal act.

**M. Shareholders' Derivative Costs**

**We** shall pay to the **Company** the reasonable legal fees and expenses incurred by any shareholder pursuing a **Claim** against **You** for a **Wrongful Act** by way of a derivative action on behalf of the **Company** but only to the extent that the **Company** is legally liable to pay such costs and expenses pursuant to court order.

**N. Additional Board Members Protection**

**We** shall pay the **Loss** of each **Board Member** (except for and to the extent that the **Company** has indemnified such **Board Member**), up to the **Additional Limit of Liability** resulting from a **Claim** first made against the **Board Member** during the **Policy Period** and notified in writing to **Us** pursuant to the provisions of this Policy for any **Wrongful Act** committed by such **Board Member** when:

- (a) the **Limit of Liability**; and
- (b) all other applicable insurance whether specifically written as excess over the **Additional Limit of Liability** of this Policy or otherwise; and

- (c) all other indemnification by the **Company** or under any other insurance policy for **Loss** available to any **Board Member** (not including claims by such **Board Member** in tort or for recourse or contribution toward other parties held liable in connection with the same **Claim**);

have all been exhausted.

Subject to the provisions of this Policy, **We** shall advance **Defence Costs** resulting from any **Claim** before its final resolution.

**Additional Limit of Liability** means up to a sub-limit of 10% of the **Limit of Liability**, in addition to the **Limit of Liability**, in the aggregate for all of **You**.

**Board Member** means any natural person who has served, is now serving or will serve on the supervisory board or any Non-Executive Director of the **Policyholder**.

### 3 – DEFINITIONS

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- 3.1 **Acquisition Limit** means the percentage figure of the total consolidated assets of the **Policyholder** as declared at the last balance sheet date prior to the inception of this Policy, as specified in Item 7 of the Schedule.
- 3.2 **Approved Person** means a person whose performance of a Controlled Function as an employee of the **Company** has been approved by the Financial Services Authority pursuant to Part V of the Financial Services and Markets Act 2000. Controlled Functions means the controlled functions numbered 1 to 20 specified by the Financial Services Authority in its Table of Controlled Functions in its Supervision Manual at 10.4.5 in Block 3 of its Handbook. **Approved Person** shall also mean any person whose function is similarly regulated in any other jurisdiction.
- 3.3 **Change in Control** means the event whereby a **Company** consolidates or merges into, or sells all or substantially all of its assets to any person, entity or group of persons or entities acting in concert; or becomes a subsidiary of another entity or becomes controlled by another unconnected entity.
- 3.4 **Claim** means:
  - (a) any written demand; and/or
  - (b) any civil or arbitral proceeding; and/or
  - (c) any criminal proceeding; and/or
  - (d) **Extradition Proceeding**; and / or
  - (e) any formal administrative or regulatory proceeding commenced against **You** made or commenced against **You** arising from or alleging a **Wrongful Act** and notice of which is first received during the **Policy Period**.
  - (f) any **Formal Investigation**, notice of which is first received during the **Policy Period**.
- 3.5 **Company** means the **Policyholder** and any **Subsidiary**.
- 3.6 **Defence Costs** means the reasonable legal and other related professional fees, expenses and disbursements incurred by **You** in connection with a **Claim**, with **Our** prior written consent, which shall not be unreasonably withheld or delayed.

**Defence Costs** also includes the reasonable fees and costs of any appeal of a **Judicial Order**.

- 3.7 **Director** means a director or officer of the **Company**; any member of the supervisory board or management board of the **Company**; a prospective director in any listing particulars or prospectus issued by the **Company**; a de facto director or a shadow director of the **Company** as defined in S. 741 (2) of the Companies Act 1985 or the equivalent legislation in any other jurisdiction in their capacity as such.
- 3.8 **Discovery Period** means the period immediately following the expiry of the **Policy Period** granted pursuant to Section 2.B.
- 3.9 **Employment Related Claim** means any **Claim** that is based on any actual or alleged violation of employment laws or any other legal provisions relating to any individual's actual or prospective employment with the **Company**.
- 3.10 **Extradition Proceeding** means any proceeding where **You** challenge, resist or defend extradition proceedings following the receipt of written notice from the responsible governmental authority advising of a request for extradition being made against **You** or the execution of a warrant for **Your** arrest as part of the extradition process.
- Extradition Proceeding** includes, but is not limited to any appeals, judicial review applications challenging the designation of any territory for the purposes of any extradition law, challenging or appealing any extradition decision by the responsible governmental authority including the designation of citizenship in relation to extradition proceedings or applications to the European Court of Human Rights or similar court with respect to extradition proceedings.
- 3.11 **Extradition Expenses** means reasonable costs fees and expenses, (including the costs of public relations consultants) incurred by **You**, or for which **You** are liable directly in connection with any **Extradition Proceeding**.
- 3.12 **Formal Investigation** means a formal investigation or inquiry into **Your** affairs or the affairs of the **Company** by a governmental, regulatory, professional or statutory body that is instituted by the service of a written request received during the **Policy Period** that **You** attend a meeting, hearing or interview whether or not such investigation or inquiry has identified a **Wrongful Act**.
- 3.13 **Independent Lawyer** means the senior lawyer that **We** have mutually agreed upon with **You**, that has relevant experience in the jurisdiction in which the **Claim** is being brought. In the absence of such agreement, the appointment will be made by the current President of the Law Society, or equivalent, in such jurisdiction.
- 3.14 **Injury** means bodily injury, mental illness, emotional distress, injury to feelings, sickness, disease or death of any person, except with respect to any **Employment Related Claim**.
- 3.15 **Judicial Order** means any interim or final judgment or award made by a court or other tribunal (including a regulatory tribunal), or any governmental order.
- 3.16 **Legal Representation Expenses** means the reasonable and necessary legal and other related professional fees, costs and expenses which **You** incur in representation at a **Formal Investigation**, which shall be subject to a maximum limit of 20% of the **Limit of Liability** which shall be part of and not in addition to the **Limit of Liability**.
- 3.17 **Limit of Liability** shall mean the sum specified in Item 3 of the Schedule.
- 3.18 **Loss** means the amount **You** are legally liable to pay in **Your Insured Capacity**, resulting from a **Claim**, including:

- (a) **Defence Costs**;

- (b) **Legal Representation Expenses;**
- (c) damages, judgements and settlements reached and costs including punitive and exemplary damages;
- (d) **Extradition Expenses.**

**Loss** does not include:

- (i) fines, taxes, or penalties;
- (ii) matters which are uninsurable under the law applicable to this Policy;

**3.19 Non-Indemnifiable Loss** means the **Loss** in respect of which the **Company** or the **Outside Entity** (as the case may be) is unable to indemnify **You** as a result of:

- (a) being explicitly prevented from doing so by the applicable law or such company's written constitutions, memorandum or articles of association; and/or
- (b) a **Change of Control**; and/or
- (c) the insolvency of a **Company** as specified under section 123 of the Insolvency Act 1986 or administrative protection or any similar practise or legislation under any other applicable jurisdiction; and/or
- (d) the seizing or freezing of a **Company's** assets by way of a legal restraint or similar order under any jurisdiction.

**3.20 Outside Entity** means

- (a) a non-profit organization, trade association or registered charity; or
- (b) any company in which the **Policyholder** directly or indirectly holds any of the issued share capital except where such entity is a **Subsidiary**.

on whose board (or equivalent) **You** are appointed at the explicit request or consent of the **Company**.

However, in no event shall **Outside Entity** mean a financial institution or an entity incorporated or domiciled or that has its securities publicly traded in the **USA** unless **We** agree in writing otherwise.

**3.21 Outside Entity Director or Officer** means a **Director** or employee who at the request of or with the explicit consent of the **Company** becomes a director or officer of such an **Outside Entity**.

**3.22 Policyholder** means the entity specified in Item 1 of the Schedule.

**3.23 Policy Period** means the period of time specified in Item 2 of the Schedule.

**3.24 Pollution** means any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products, mould and any noise. Such waste shall include recycled, reconditioned, or reclaimed and nuclear materials.

- 3.25 **Pollution Defence Costs** means **Defence Costs** up to a maximum limit of 20% of the **Limit of Liability** which shall be part of and not in addition to the **Limit of Liability**.
- 3.26 **Premium** means the premium specified in Item 8 of the Schedule.
- 3.27 **Prior and Pending Litigation Date** means the inception date or as otherwise specified in Item 6 of the Schedule.
- 3.28 **Property Damage** means physical damage to or destruction or loss of use of any tangible property.
- 3.29 **Proposal** means the proposal form (whether in electronic or paper form) and supporting information or documentation submitted or required to be submitted by the **Company** and/or **You** in applying for this Policy or any extension or variation of it.
- 3.30 **Retention** shall mean the sums specified in Item 4 of the Schedule.
- 3.31 **Subsidiary** means an organisation in which the **Policyholder**, on or before the inception date of this Policy, directly or indirectly controls:
- (a) a majority of the voting rights or voting shares; and/or
  - (b) the appointment or removal of a majority of the board of directors; and/or
  - (c) more than 50% of the issued share capital.
- A **Company** ceases to be a **Subsidiary** when none of the above conditions apply.
- 3.32 **Trustee** means a trustee or administrator of any pension, profit sharing, health, welfare or any other employee benefit programme established by the **Policyholder**.
- 3.33 **USA** means the United States of America, its territories or possessions.
- 3.34 **We, Us** or **Our** means Sagicor at Lloyd's and such other underwriters including Lloyd's Syndicates that may subscribe to this Policy.
- 3.35 **Wrongful Act** means any actual, alleged or proposed act or omission, error, misstatement, neglect, breach of duty or breach of trust that is committed by **You** when acting or serving in **Your Insured Capacity**. **Wrongful Act** includes but is not limited to
- (a) an **Employment Related Claim**
  - (b) violations of Sarbanes Oxley 2002 and equivalent laws in any other jurisdiction.
- 3.36 **You** or **Your** means any natural person who, at the date of Policy inception, has been, is or who, during the **Policy Period** becomes:
- (a) a **Director**, or
  - (b) an **Outside Entity Director or Officer**, or
  - (c) an employee of the **Company** who is joined as a party to any action against any person defined in (a) or (b) above; or an employee while acting in a managerial or supervisory capacity; or
  - (d) an employee of the **Company** who is employed as a lawyer who in their capacity as such must comply with Sarbanes Oxley 2002.
  - (e) an **Approved Person**.

The above definition does not include external auditors of the **Company** or any **Trustees**.

**Your** shall be interpreted as to be consistent with **You**.

**3.37 Your Insured Capacity** means **Your** status as an insured person under this Policy.

#### 4 - EXCLUSIONS

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**We** shall not be liable under this Policy for **Loss**

**A. Conduct**

incurred by or on behalf of **You** arising from or attributable to:

- (a) **Your** dishonest or fraudulent acts or omissions; or
- (b) **Your** unlawful profit or advantage whether or not financial.

This exclusion shall apply only if it is established through: a final judgment; or adjudication; or any formal written admission by **You** that the relevant conduct occurred.

If it is established, as defined above, that the relevant conduct did in fact occur, **You** shall be liable to **Us** for any indemnity received under this Policy and **You** shall repay **Us** such indemnity on demand.

**B. Injury & Property Damage**

for any **Claim** for:

- (a) **Injury** or
- (b) **Property Damage** provided that this exclusion does not apply to **Defence Costs** incurred in connection with a **Claim** arising from **Pollution** (other than a **USA Claim**).

**C. Pollution**

arising from or attributable to any **Claim** involving **Pollution**. Provided however that this exclusion shall not apply to:

- (a) any **Claim** brought by a securities holder of the **Company** based on such securities holder's interest in such securities who is not party to this insurance and who is acting totally independently of, and totally without the active assistance, active intervention or active solicitation of any of **You**, the **Company** or an **Outside Entity**, or
- (b) **Pollution Defence Costs**.

**D. Prior Claims & Circumstances and Legal & Regulatory Proceedings**

arising from or attributable to:

- (a) those matters which are the basis of, or which constitute a significant factor in, any legal or regulatory proceedings or official investigations involving: the **Company**, an **Outside Entity**, or **You**, which have commenced before the **Prior and Pending Litigation Date**; and/or
- (b) any matter of which notice has been given under any policy of which this Policy is a renewal or replacement or which it may succeed in time.

**E. Professional Indemnity**

arising from or attributable to any **Claim** for failure to perform professional services for others for a fee, or any act, error, or omission relating thereto. This exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services.

**F. Major Shareholder**

arising from or attributable to any **Claim** made by or on behalf of, whether directly or derivatively, where any individual or entity that owns or controls (whether beneficially, directly or indirectly) 15% or more of the issued and outstanding voting share capital of the relevant **Company**.

**G. SEC Exclusion**

or **Legal Representation Expenses** in connection with any **Claim** or **Formal Investigation** made against any of **You** alleging, arising out of, based upon, or attributable to i) the purchase or sale or offer or solicitation of an offer to purchase or sell any security, or ii) the violation of any provisions of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, RICO, or regulations promulgated thereunder, or any similar federal or state law (whether statutory, regulatory, or common law), including but not limited to actions brought by a governmental or regulatory or self-regulatory entity or authority, or actions alleging damages to the **Policyholder** or its shareholders.

## 5 - GENERAL CONDITIONS

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The operation of this Policy is subject to the following general conditions.

**A. Assignment**

Any rights, changes, modifications, or interest under this Policy can only be assigned with **Our** written consent.

**B. Cancellation**

This Policy may not be cancelled unless the **Premium** has not been paid. In those circumstances, **We** may serve a notice of cancellation on the **Company** and this shall have the effect of cancelling the Policy with immediate effect.

**C. Contract (Rights of Third Parties) Act 1999**

Nothing in this Policy is intended to confer a benefit on any person other than **You** under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**D. Dispute Resolution & Governing Law**

Should any dispute which arises out of or in connection with this Policy, that **We** and **You** cannot mutually resolve, it shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA"). The Rules of the LCIA are deemed to be incorporated by reference into this clause. There shall be three arbitrators.

The parties to the arbitration shall each nominate one arbitrator, who shall in turn jointly nominate a third. Should the two arbiters appointed by the parties to the dispute be unable to agree upon the third nomination, the chairperson of the LCIA or their representative shall make such nomination. The place of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English. The law governing the construction and interpretation of this Policy shall be the substantive law of England.

**E. Future Offerings**

In the event that, after the inception of the **Policy Period**, the **Company** or an **Outside Entity** makes an initial public offering of its own shares in any jurisdiction; or a public offering of its own shares in the **USA** or that is subject to the **USA** courts' or regulators' jurisdiction, then **We** shall have a liability under this Policy provided **We** are notified in writing of such offering and the **Policyholder** provides further information to the extent required by **Us** and had accepted any amendments in the provisions of the Policy including the payment of any reasonable additional premium.

**F. Limit of Liability & Retention**

- (a) The **Limit of Liability** is the maximum aggregate amount payable by **Us** under this Policy. The **Limit of Liability** is an aggregate limit of liability and is inclusive of **Loss**, and any Policy Extensions and all sub-limits of liability.
- (b) **We** will only pay **Loss**, and any Policy Extensions above the **Retention**.
- (c) The **Retention** shall be the first amount borne by the **Company** and shall remain uninsured.
- (d) The **Retention** does not apply to **Non-Indemnifiable Loss**.
- (e) The **Retention** shall apply separately in respect of each and every **Claim**.
- (f) In the event that the **Company** is permitted or required to indemnify **You** but for whatever reason does not do so, then for that portion of **Loss** which falls within the applicable **Retention**, **We** shall pay **You**, or shall pay on **Your** behalf such amount, which shall immediately become payable by the **Company** to **Us**.

**G. Other Insurance and Indemnification**

This Policy is intended to provide primary insurance cover. However, in the event that any more specific valid and collectable insurance is available to **You**, this Policy shall apply in excess of such insurance.

**H. Policy Interpretation**

This Policy, the Schedule and any endorsements constitute parts of a single contract in which, unless the context otherwise requires:

- (a) singular includes the plural, and vice versa;
- (b) headings are descriptive only, not an aid to interpretation;
- (c) all references to specific legislation include amendments to and re-enactments of such legislation and equivalent legislation in the relevant jurisdiction;
- (d) the male includes the female and neuter; and
- (e) references to positions, offices, titles or legislation shall include their equivalent in the relevant jurisdiction.

I. **Series Clause**

Two or more **Claim(s)** arising out of a single **Wrongful Act** or a series of related **Wrongful Acts** shall be treated as a single **Claim**. That single **Claim** shall be deemed first made when the earliest of such **Claim(s)** was first made. Only one **Retention** shall apply to such **Claim**.

**6 – CLAIMS CONDITIONS**

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A. **Allocation**

If **You** incur a **Loss** covered by this Policy together with any other loss or if a single **Claim** is made against both **You** and another person or entity not entitled to an indemnity under this Policy then **We** will use our best efforts with **You** to agree a fair and proper allocation of **Loss** for which there is coverage under this Policy, having regard to the relative legal and financial exposures of, and the relative benefits obtained by, the relevant parties.

Should **We** and **You** not agree upon an allocation, an **Independent Lawyer** shall determine a fair and proper allocation, having regard to the relative legal and financial exposures of, and the relative benefits obtained by, the relevant parties. **We** shall be liable for the payment of the fees of the **Independent Lawyer**.

Until **We** reach an agreement on allocation with **You**, or until an **Independent Lawyer** has determined an allocation, **We** shall pay **Loss** based upon **Our** reasonable assessment of allocation.

B. **Conduct of Defence & Settlement**

Except as provided below, **You** have the duty to defend any **Claim** and **You** agree not to do anything that intentionally serves to increase any potential **Loss** recoverable under this Policy.

**We** maintain the right to actively participate in the defence and settlement of any **Claim**.

**You** shall not incur **Defence Costs** or **Legal Representation Expenses** or waive any recovery right or settle any **Claim** without **Our** prior written consent, which is not to be unreasonably withheld or delayed. Neither shall **You** make any intentional admission of liability without **Our** prior written consent, which is not to be unreasonably withheld or delayed, unless **You** are required to do so by the applicable law relevant to such **Claim**.

C. **Legal Opinion**

**You** shall not be required to contest any **Claim** unless an **Independent Lawyer** advises that **You** should. In so advising, the **Independent Lawyer** shall take into consideration all aspects of the matter, including the prospects of a successful defense of the **Claim** and any amounts receivable under this Policy. **We** shall be liable for the payment of the fees of the **Independent Lawyer**.

D. **Order of Payments**

**We** will pay **Loss** in the order it is presented to **Us**, with the intention to prioritize such payments that most benefit the individual natural persons insured hereunder. If **You** or **We** believe that the **Limit of Liability** will not be sufficient to cover all expected **Loss** then, in **Our** absolute discretion, **We** will pay **Loss** in the following order:

- (a) **Non-Indemnifiable Loss**; followed by
- (b) other **Loss** incurred by **You**; followed by
- (c) any other **Loss**.

**E. Subrogation**

In the event of any payment under this Policy in respect of a **Claim**, **We** shall be subrogated to the extent of such payment to all of **Your** rights of recovery in respect of and to the extent of such payment and shall be entitled to pursue and enforce such rights in **Your** name. At **Our** cost, **You** shall provide all reasonable assistance to **Us** to help enforce those rights and **You** shall not intentionally do anything which prejudices **Our** potential rights of recovery. **We** shall restore to **You** any amounts **We** recover in excess of **Our** total payment in respect of **Loss**, less the cost to **Us** of such recovery.

**D&O CLAIMS NOTIFICATION FORM:**

In the event of a **Claim** or **Formal Investigation against You**, complete the following Claims Notification form, carrying out the following procedures and send to the address below;

Head of Claims, Manchester Underwriting  
Management Limited, Centennium Court, East  
Street, Chesham HP5 1DG. Telephone: 01494  
770700.

**Person Notifying  
Claim:**  
**Position:**


**Step One**

Provide **Us** written notice as soon as practicable, but no later than 45 days after expiry of the **Policy Period** and provide the following:

**Company:**  
**Policy Number:**


**Date:**  
**Policy Period:**


**Step Two**

Send the written notice to the above address, providing the name of the person providing notification. Notice to other underwriters subscribing to this Policy should be sent to their appropriate claims department.

**Step Three**

Provide **Us** with the following (use additional paper where necessary);

(i) A description of the **Claim** or circumstance

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(ii) The nature and details of the **Wrongful Act**

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(iii) The nature and amount of the alleged or potential **Loss**

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(iv) The names of actual or potential claimants

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(v) The manner in which **You** first became aware of the **Claim** or circumstance.

