

Sections 1 and 2 of this **D&O Coverage Section** only apply if Management Liability is shown as purchased on the Schedule.

Section 3 of this **D&O Coverage Section** only applies if Corporate Legal Liability is shown as purchased on the Schedule.

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## D&O Coverage Section

### Management Liability and Corporate Liability Section

In consideration of the payment of the premium, or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

The **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **D&O Coverage Section**.

All cover under this **D&O Coverage Section** is afforded solely with respect to:

- (i) **Claims** first made against the **Insured**; and
- (ii) **Insured Events** first occurring

during the **Policy Period** or **Discovery Period** and reported to the **Insurer** as required by the **General Terms and Conditions**.

The cover under Sections 1 and 2 of this **D&O Coverage Section** is subject to the **Management Liability Limit of Liability** and the cover under Section 3 of this **D&O Coverage Section** is subject to the **Corporate Liability Limit of Liability**.



Bring on tomorrow

## 1. Management Liability Insurance Covers

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### 1.1. Management Liability

The **Insurer** will:

- (i) pay the Loss of each Insured Person arising from a Claim against that Insured Person; or
- (ii) pay on behalf of or reimburse the Company for any Loss arising from a Claim against an Insured Person for which it has indemnified an Insured Person.

### 1.2. Pre-Claim Inquiry

The Insurer will pay the Pre-Claim Inquiry Costs of each Insured Person arising from a Pre-Claim Inquiry.

## 2. Management Liability Protection Suite

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### 2.1. Mitigation Costs

The **Insurer** will indemnify an **Insured Person** for any reasonable and necessary payments to a potential claimant, or an **Insured Person's** reasonable and necessary costs and expenses incurred as a result of action taken by the **Insured Person** solely to prevent or mitigate a potential **Claim** against an **Insured Person** which, if it were to become a **Claim**, would give rise to a covered loss under this **D&O Coverage Section**, provided that:

- (i) the circumstances resulting in the payment, costs or expenses are reported in accordance with Section 3.1 (Notice and Reporting) of the **General Terms and Conditions** of this **Policy**; and
- (ii) any action taken is taken with the prior written consent of the **Insurer**; and
- (iii) The **Insured Person** demonstrates, to the reasonable satisfaction of the **Insurer**, that the incurring of such payments, costs or expenses is reasonable and proportionate, and is reasonably likely to prevent or mitigate the potential **Claim**; and
- (iv) the liability of the **Insurer** under this Section 2.1 (Mitigation Costs) shall in no event exceed the amount of covered **Loss** it would have incurred if a **Claim** were to be pursued against the **Insured Person**; and
- (v) the burden of proving that any **Claim** would be covered under this **D&O Coverage Section** shall rest with the **Insured**.

Cover under this Section 2.1 (Mitigation Costs) shall be subject to the Sub-Limit specified in Item 5 of the Schedule.

This Section 2.1 (Mitigation Costs) shall not apply to a potential **Claim** by the **Company** against any **Insured Person**.

In no event shall cover under this Section 2.1 (Mitigation Costs) include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

### 2.2. Regulatory Enforcement

- (i) Civil Fines and Civil Penalties

The **Insurer** will pay civil fines and civil penalties assessed against any **Insured Person** which an **Insured Person** is legally liable to pay pursuant to any **Claim**, but only where there has been no determination of intentional, grossly negligent or deliberate breach of the law by the **Insured Person**.

- (ii) Personal Liability for Corporate Taxes

The Insurer will pay unpaid corporate taxes of the Company where, and only to the extent that, personal liability for such non-payment of tax is established by law against an Insured Person in the jurisdiction in which the Claim is made, provided that:

- (a) such liability does not arise from the deliberate or intentional acts of such **Insured Person**; and
- (b) neither the **Policyholder** nor the relevant **Company** is able to pay the tax either by reason of insolvency or legal prohibition.

### 2.3. Lifetime Run-Off for Retired or Resigned Insured Persons

The Insurer will provide an unlimited **Discovery Period** for any **Insured Person** who retires or resigns, other than by reason of a **Transaction** or insolvency of the **Policyholder**, prior to or during the **Policy Period**, provided that, on expiry of this **Policy**:

- (i) this **Policy** is not renewed or replaced with any other management liability cover; or
- (ii) where this **Policy** is renewed or replaced with any other management liability cover, such renewal or replacement policy does not provide an extended discovery period of at least six (6) years for such retired or resigned **Insured Persons**.

### 2.4. Emergency Costs

If the Insurer's prior written consent cannot reasonably be obtained before **Defence Costs** or **Pre-Claim Inquiry Costs** are incurred, then the Insurer shall give retrospective approval for such reasonable costs, subject to the Sub-Limit specified in Item 5 of the Schedule.

### 2.5. Assets & Liberty Cover

The Insurer will pay:

- (i) **Defence Costs** and **Prosecution Costs** with respect to any **Asset and Liberty Proceeding** or **Extradition Proceeding**;
- (ii) **Extradition Expenses**, subject to the Sub-Limit specified in Item 5 of the Schedule; and
- (iii) **Personal Expenses** in the event of a **Confiscation Order**, subject to the Sub-Limit specified in Item 5 of the Schedule,

of each **Insured Person**.

### 2.6. Insolvency Hearing Cover

The Insurer will pay the **Insolvency Hearing Costs** of each **Insured Person**, subject to the Sub-Limit specified in Item 5 of the Schedule.

### 2.7. Corporate Manslaughter

The Insurer will pay the **Loss** of any **Insured Person** with respect to any proceeding brought against them for a gross breach of duty of care causing the death of another person including under the Corporate Manslaughter and Corporate Homicide Act 2007.

### 2.8. Reputation Expenses

The Insurer will pay the **Reputation Expenses** of each **Insured Person**, subject to the Sub-Limit specified in Item 5 of the Schedule.

### 3. Corporate Legal Liability Cover and Company Extensions

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#### 3.1. Corporate Legal Liability

The **Insurer** will pay the **Loss** of any **Company** arising from a **Claim** against such **Company** for **Corporate Liability**.

#### 3.2. Health and Safety & Corporate Manslaughter Costs

The **Insurer** will pay:

- (i) the **Health and Safety Representation Expenses** of any **Company**;
- (ii) the **Health and Safety Proceedings Costs** of any **Company**; and
- (iii) **Fees for Intervention** and the reasonable and necessary fees, costs and expenses incurred with the **Insurer's** prior written consent by a **Company** in respect with any **Health and Safety Proceedings** for **Fees for Intervention**.

subject to the Sub-Limit specified in Item 5 of the Schedule.

#### 3.3. Company Defence Costs

The **Insurer** will pay the **Defence Costs** of any **Company** with respect to:

- (i) a **Claim** for **Bodily Injury and/or Property Damage** other than a **Claim** covered under Extension 3.2 (Health and Safety & Corporate Manslaughter Costs), subject to the Sub-Limit specified in Item 5 of the Schedule;
- (ii) any **Claim** with respect to a **Pollution Condition**, subject to the Sub-Limit specified in Item 5 of the Schedule;
- (iii) any **Claim** alleging a breach by any **Company** of any express (written or oral) contract or agreement, subject to the Sub-Limit specified in Item 5 of the Schedule;
- (iv) any **Claim** seeking fines and penalties against any **Company**.

#### 3.4. Company Regulatory Crisis Response

The **Insurer** will pay the reasonable and necessary fees, costs and expenses incurred by the **Company** with the **Insurer's** prior written consent in retaining legal advisers to respond to a **Critical Regulatory Event**, subject to the Sub-Limit specified in Item 5 of the Schedule.

#### 3.5. Crisis Event Public Relations Expenses

The **Insurer** will pay the **Company's** reasonable and necessary fees, costs and expenses incurred by the **Company** of public relations consultants retained to mitigate the adverse effect or potential adverse effect on a **Company's** reputation with respect to a **Crisis Event**, subject to the Sub-Limit specified in Item 5 of the Schedule.

#### 3.6. Identity Fraud

If any party other than any **Insured Person** enters into any agreement with any third party entity fraudulently representing themselves as any **Company**, then the **Insurer** shall pay any reasonable and necessary fees, costs and expenses incurred by such **Company** in establishing that such fraudulent misrepresentation has occurred, in the event that the third party entity seek to enforce such agreement against such **Company**, subject to the Sub-Limit specified in Item 5 of the Schedule.

## 4. Definitions

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The following definitions are specific to this **D&O Coverage Section**. All other definitions set out within Section 5.2 (Definitions of General Applicability) in the **General Terms and Conditions** shall apply as stated.

### 4.1. Asset and Liberty Proceeding

any action taken against any **Insured Person** by any **Official Body** seeking:

- (i) to disqualify an **Insured Person** from holding office as a **Director or Officer**;
- (ii) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **Insured Person**;
- (iii) a charge over real estate property or personal assets of an **Insured Person**;
- (iv) a temporary or permanent prohibition on an **Insured Person** from holding the office of or performing the functions of a **Director or Officer**;
- (v) a restriction of an **Insured Person's** liberty as an official detention, or to a specified domestic residence; or
- (vi) 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.

### 4.2. Bail Bond and Civil Bond Premium

the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for a specified amount required by a court of competent jurisdiction.

### 4.3. Bodily Injury and/or Property Damage

bodily injury, sickness, disease, death or emotional distress of any natural person; or damage to, destruction of, impairment or loss of use of any property.

### 4.4. Claim

- (i)
  - (a) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration or any other alternative dispute resolution process;
  - (b) a civil, regulatory, mediation, administrative, arbitration or other alternative dispute resolution proceeding including any counter-claim, seeking compensation or other legal remedy; or
  - (c) a criminal proceeding, including any proceeding brought pursuant to the UK Bribery Act 2010, made or brought against an **Insured Person** alleging a **Wrongful Act**, or in respect of Corporate Legal Liability Cover 3.1 only, made or brought against a **Company** alleging a **Corporate Wrongful Act**;
- (ii) in respect of Insurance Cover 1.1 (Management Liability) only:
  - (a) any Insured Person Investigation;
  - (b) the receipt by an Insured Person of any written request to toll a period or statute of limitations which may be applicable to any Claim that may be made for any Wrongful Act of any Insured Person.

### 4.5. Clean Up Costs

expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

#### 4.6. Confiscation Order

an order by any **Official Body** 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 an **Extradition Proceeding**.

#### 4.7. Corporate Liability

any legal liability arising from a **Corporate Wrongful Act**.

#### 4.8. Corporate Liability Limit of Liability

the amount specified in Item 4 of the Schedule for liability under Section 3 of this **D&O Coverage Section**.

#### 4.9. Corporate Wrongful Act

any actual or alleged act, error or omission, of a **Company** other than an **Employment Practices Violation**.

#### 4.10. Crisis Event

- (i) the sudden, unexpected death or disability of any **Director or Officer** of the **Policyholder**;
- (ii) the criminal conviction of any **Director or Officer** of the **Policyholder**;
- (iii) employee workplace violence at a **Company**;
- (iv) a recall or boycott of any product of the **Company**;
- (v) a man-made disaster which threatens the continued validity of the **Policyholder** as a going concern;
- (vi) any public announcement of a criminal or fraud investigation into the **Company** or any **Director or Officer**;
- (vii) any negative publicity resulting from a **Claim**; or
- (viii) loss of intellectual property right previously acquired under law by any **Company** for a patent, trademark or copyright, other than by expiration.

**Crisis Event** shall not include an event that affects a **Company's** industry in general, rather than the **Company** specifically.

#### 4.11. Crisis Firm

any public relations consultants approved by the **Insurer**.

#### 4.12. Critical Regulatory Event

- (i) a raid on, or unscheduled on-site visit to, any **Company** which first takes place during the **Policy Period** by an **Official Body** that involves the production review, copying or confiscation of files or interviews of any **Insured Person**;
- (ii) a public announcement relating to the foregoing; or
- (iii) the receipt by an **Insured** during the **Policy Period** from an **Official Body** of a formal notice which legally compels the **Insured** to produce documents to, or answer questions by or attend interviews with that **Official Body**.

**Critical Regulatory Event** does not include a **Health and Safety Investigation**.

#### 4.13. Defence Costs

- (i) reasonable fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent (except with respect to Extension 2.4 (Emergency Costs) or where such costs are incurred through

the Advice and Defence Legal Helpline pursuant to 3.4 (Insurer's Consent) of the **General Terms and Conditions**), by or on behalf of an **Insured** after a **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding** is made, in the investigation, defence, settlement or appeal of such **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**;

- (ii) reasonable fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent, by or on behalf of an **Insured** of accredited experts, retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**; and
- (iii) **Bail Bond and Civil Bond Premium** in connection with any **Claim, Asset and Liberty Proceeding** or **Extradition Proceeding**.

**Defence Costs** shall not include **Pre-Claim Inquiry Costs**, the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

#### 4.14. Director or Officer

any natural person who was, is or becomes a duly elected or appointed director or officer of a **Company** (or equivalent position).

#### 4.15. Employment Practices Violation

any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective employee or **Insured Person** of any **Company**.

#### 4.16. Extradition Expenses

in accordance with Section 2.5 (Assets & Liberty Cover), the reasonable fees, costs and expenses incurred by an **Insured Person** for:

- (i) any accredited crisis counsellor and/or tax advisor; and
- (ii) any public relations consultants retained by an **Insured Person** and incurred in any **Extradition Proceeding** brought against such **Insured Person** or in connection with an **Asset and Liberty Proceeding**.

#### 4.17. Extradition Proceeding

any extradition proceedings brought against an **Insured Person** or related appeal, any judicial review applications challenging the designation of any territory for the purposes of any extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority, or any applications to the European Court of Human Rights or similar court in another jurisdiction.

#### 4.18. Fees for Intervention

recovery of the Health and Safety Executive's costs, including inspection, investigation and enforcement action costs in accordance with the Health and Safety (Fees) Regulations 2012 resulting from a material breach of the law by the **Company**, but not including any other costs of the Health and Safety Executive.

#### 4.19. Health and Safety Investigation

a formal enquiry into the conduct of the **Company** first instituted during the **Policy Period** and conducted by an enforcing authority under the Health and Safety at Work Act 1974, or similar provision in any other jurisdiction.

#### 4.20. Health and Safety Proceedings Costs

the reasonable and necessary fees, costs and expenses incurred by the **Company**, with the **Insurer's** prior written consent, in the defence, settlement or appeal of **Claim** first made during the **Policy Period** brought by any prosecutor or regulatory or enforcing authority with respect to health and safety legislation either:

- (i) following a **Health and Safety Investigation**; or
- (ii) alleging a violation of or offence under the Corporate Manslaughter and Corporate Homicide Act 2007.

**Health and Safety Proceeding Costs** do not include the amount of any award made against the **Company** or the cost of modifying any equipment, workplace or premises in order to meet applicable health and safety standards or the cost of any training, corporate programme, seminar or creation of a policy or procedure.

#### 4.21. Health and Safety Representation Expenses

reasonable and necessary fees, costs and expenses incurred by **Company** with the **Insurer's** prior written consent for legal representation fees and related professional advice that a **Company** incurs in its representation at a **Health and Safety Investigation**.

#### 4.22. Insolvency Hearing Costs

in accordance with Section 2.6 (Insolvency Hearing Costs) the reasonable and necessary fees, costs and expenses 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 a **Director or Officer**, by any insolvency administrator or receiver, bankruptcy trustee or liquidator or the equivalent under the 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** in his capacity as a **Director or Officer**.

In no event shall **Insolvency Hearing Costs** include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

#### 4.23. Insured

any **Company** or **Insured Person**.

#### 4.24. Insured Event

any **Claim**, **Pre-Claim Inquiry** or matter or event covered under Section 2 or Section 3 of this **D&O Coverage Section**.

#### 4.25. Insured Person

any natural person who was, is or becomes:

- (i) a **Director or Officer**, but not an externally appointed auditor, insolvency administrator or receiver, bankruptcy trustee or liquidator of a **Company**;
- (ii) an employee of a **Company**;
- (iii) a **Shadow Director** or a de facto director;
- (iv) an **Outside Entity Director**;

but only when, and to the extent, that such **Insured Person** is acting in such **Insured Person** capacity.

**Insured Person** is extended to include:

- (1) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and



- (2) the administrator, heirs, legal representatives, or executor of a deceased, legally incompetent, insolvent or bankrupt estate,

of an **Insured Person** referred to in (i) to (iv) above, to the extent that a **Claim** is brought against them solely by reason of them having an interest in property that is sought to be recovered in a **Claim**.

#### 4.26. Insured Person Investigation

any formal or official civil, criminal, administrative or regulatory hearing, examination inquiry or investigation of an **Insured Person**:

- (i) once the **Insured Person** is identified in writing by an investigating **Official Body** as a target of a hearing, examination, inquiry or investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding against that **Insured Person**; or
- (ii) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured Person** by any law enforcement authority.

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

#### 4.27. Loss

**Defence Costs** and any other amount, including any awards of damages (including any court order to pay compensation for damage resulting from a contravention of any statute or legislative provision and punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post-judgment interest on a covered judgment or award, and the multiplied portion of multiple damages, which an **Insured** is legally liable to pay resulting from a **Claim**.

**Loss** shall include **Pre-Claim Inquiry Costs** and any amount covered under any Management Liability Protection Suite or Company Extension, but only to the extent set out in the relevant section.

**Loss** shall not include: (i) fines or penalties or taxes unless covered under Section 2.2 (Regulatory Enforcement); (ii) remuneration or employment-related benefits; or (iii) **Clean Up Costs** relating to hazardous materials, pollution or product defects.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defence Costs** or to any **Non-Indemnifiable Loss**.

In no event shall **Loss** include amounts which the **Insurer** is prohibited from paying by law of the **Policy** or the law of the jurisdiction where the **Claim** was made or where an **Insured Event** arises.

#### 4.28. Management Liability Limit of Liability

the amount specified in Item 4 of the Schedule for management liability under Sections 1 & 2 of this **D&O Coverage Section**.

#### 4.29. Non-Indemnifiable Loss

**Loss** which a **Company** has not indemnified an **Insured Person** and is not permitted or required to indemnify such **Insured Person** pursuant to law or contract or the Articles of Association, charter, bylaws, operating agreement, indemnity deeds or similar documents of a **Company**.

**4.30. Official Body**

any regulator, government body, government agency, parliamentary commission, official trade body, or any similar body having legal authority to investigate the affairs of an **Insured**.

**4.31. Outside Entity**

any entity other than an entity:

- (i) that is a **Company**;
- (ii) whose principal operations include a bank, clearing house, credit institution, underwriting for collective investment in securities, investment firm, investment advisor / manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity;
- (iii) that is incorporated or domiciled United State of America; or
- (iv) that has any of its securities listed on a securities exchange.

**4.32. Outside Entity Director**

a natural person who did, does or during the **Policy Period** begins to serve, at the specific request or direction of a **Company**, as a director or officer, **Shadow Director**, trustee (except a pension trustee) or equivalent of an **Outside Entity**.

**4.33. Personal Expenses**

in accordance with Section 2.5 (iii) (Assets & Liberty Cover), the expenses set out below to be paid directly by the **Insurer** to a third party service provider of an **Insured Person**:

- (i) schooling cost for dependant non-adults;
- (ii) monthly primary housing mortgage payments or rental cost;
- (iii) utilities cost, including private water, gas, electricity, phone and internet services; or
- (iv) personal insurance premiums, including Property, Life, and Health policies,

provided that: (a) the services were contracted by the **Insured Person** prior to the **Confiscation Order** and are owed by such **Insured Person**; (b) the expenses are in excess of any personal allowance granted in connection with the **Confiscation Order**; and (c) 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 the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

#### 4.34. Pollutant

any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.

#### 4.35. Pollution Condition

any actual, alleged or threatened discharge, dispersal, release or escape of a **Pollutant**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, nuclear material or nuclear waste.

#### 4.36. Pre-Claim Inquiry

- (i) a verifiable request for an **Insured Person** to: (A) appear at a meeting or interview; or (B) produce documents, records or electronic information that, in either case, concerns a **Company** or an **Insured Person** in their insured capacity, but only if the request is made by:
  - (a) an Official Body; or
  - (b) a Company, or, on behalf of any Company, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), and:
    - (1) arises out of an inquiry or investigation by an **Official Body** concerning a **Company** or an **Insured Person** in their insured capacity; or
    - (2) following a formal written notification to an **Official Body** by a **Company**, **Insured Person** or whistleblower informing them of an actual or suspected material breach of an **Insured Person's** legal or regulatory duties if and to the extent that such inquiry is requested by an **Official Body**; or
- (ii) a raid on, or unscheduled on site visit to any **Company** or any **Outside Entity** by an **Official Body** that involves the production, review, copying or confiscation of documents, records or electronic information or interviews of an **Insured Person**.

**Pre-Claim Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a **Company's** and / or **Official Body's** normal review or compliance process.

#### 4.37. Pre-Claim Inquiry Costs

reasonable fees, costs and expenses incurred by an **Insured Person**, with the **Insurer's** prior written consent, solely in connection with his or her preparation for and response to a **Pre-Claim Inquiry** directed at such **Insured Person**, but excluding (i) any compensation of any **Insured Person** or cost of their time; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of any **Company**, the requester or any other third party.

In no event shall **Pre-Claim Inquiry Costs** include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

#### 4.38. Prosecution Costs

reasonable and, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction.

**Prosecution Costs** shall not include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Company**.

#### 4.39. Reputation Expenses

in accordance with Section 2.8 (Reputation Expenses), the reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, of a **Crisis Firm** retained by an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on that **Insured Person's** reputation from:

- (i) negative statements made during the **Policy Period** in any press release or published by any print or electronic media outlet regarding the alleged violation of fiduciary duties by such **Insured Person**; or
- (ii) a **Claim**, by disseminating findings made in a judicial disposition of that **Claim** which exonerates the **Insured Person** from fault, liability or culpability.

**Reputation Expenses** shall not include the remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

#### 4.40. Shadow Director

any natural person, who, as a consequence of being a **Director or Officer** or employee of any **Company** is deemed a shadow director, as defined in Section 251 of the Companies Act 2006, of any other **Company** or any **Outside Entity**.

#### 4.41. US Claim

a **Claim** brought or maintained within the jurisdiction of, or based upon any laws of, the United States of America, its territories or possessions.

#### 4.42. Wrongful Act

with respect to any **Insured Person**:

- (i) any actual or alleged act, error or omission, breach of duty, breach of trust, misstatement, misleading statement or breach of warranty of authority by an **Insured Person** in any of the capacities listed in the definition of **Insured Person**; or any matter claimed against an **Insured Person** solely because of such listed capacity; or
- (ii) any proposed act, error or omission or any default pursuant to Section 260(3) of the Companies Act 2006 (UK).

## 5. Exclusions

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The following Exclusions are specific to this **D&O Coverage Section**.

**Exclusions applicable to Section 1 (Management Liability Insurance Cover), Section 2 (Management Liability Protection Suite) and Section 3 (Corporate Legal Liability Cover and Company Extensions):**

The **Insurer** shall not be liable to make any payment for **Loss** under any Management Liability Insurance Cover, Management Protection or Corporate Legal Liability Cover and Company Extension:

### 5.1. Conduct

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Insured** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act by the **Insured**,

in the event that any of the above is established by final adjudication of a judicial or arbitral tribunal or by a formal written admission by the **Insured**.

### 5.2. Prior Claims and Circumstances

arising out of, based upon or attributable to:

- (i) any facts alleged or the same or related **Wrongful Acts** or the same or related **Corporate Wrongful Acts** alleged or contained in any circumstance or **Insured Event** 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;
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, mediation, other dispute resolution or adjudication as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts alleged in such actions; or
- (iii) any **Insured Event** that would otherwise constitute a **Single Claim** with any claim or other matter reported under any policy of which this **Policy** is a renewal or replacement or which it may succeed in time.

Exclusion 5.2 (i)(Conduct) shall not apply to any circumstances which have been notified to the **Insurer** under any earlier policy, but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer** from the inception date of such earlier policy until the expiry date of this **Policy**.

### 5.3. Bodily Injury and Property Damage

arising out of, based upon or attributable to bodily injury, sickness, disease, death, emotional distress, or mental anguish of any natural person; or damage to, or destruction, impairment or loss of use of any property.

This Exclusion 5.3 (Bodily Injury and Property Damage) shall not apply to:

- (i) any **Claim** against an **Insured Person** for emotional distress or mental anguish with respect to an **Employment Practices Violation**;
- (ii) **Defence Costs** of any **Insured Person** including with respect to any **Claim** brought against an **Insured Person** for any alleged breach of occupational health and safety law;
- (iii) **Loss** of an **Insured Person** where and to the extent personal liability is established against an **Insured Person**, but only in circumstances where the **Company** has neither indemnified, nor is permitted or required to indemnify, the **Insured Person** pursuant to law or contract or the Articles of Association, charter, bylaws, operating agreement, indemnity deeds or similar documents of the **Company**; or

- (iv) Section 2.7 (Corporate Manslaughter) and Corporate Legal Liability Cover and Company Extensions 3.2 (Health & Safety and Corporate Manslaughter Costs) and 3.3(i) (Bodily Injury and Property Damage Defence Costs).

#### 5.4. US Claims Brought by any Company

arising out of, based upon or attributable to any **US Claim** which is brought by or on behalf of any **Company** against any **Insured**, or by any **Outside Entity** against an **Outside Entity Director**:

This Exclusion 5.4 (US Claims Brought by any Company) shall not apply to:

- (i) any **US Claim** against any **Insured Person** if the **Company** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in any other jurisdiction), brought by the examiner, trustee, receiver, liquidator, rehabilitator, creditors committee, bondholder committee, equity committee or any other creditor or group of creditors on behalf of or in the right of such **Company** or **Outside Entity**; or
- (ii) **Defence Costs** of an **Insured Person**.

#### 5.5. Professional Services

arising out of, based upon or attributable to:

- (i) the performance of or failure to perform professional services; or
- (ii) provision of or failure to provide any professional advice

to a customer or client, or to a potential customer or client, of the **Insured**.

This Exclusion 5.5 (Professional Services) shall not apply to a **Claim** against an **Insured Person** alleging a failure to supervise those who performed or failed to perform such professional services or those who provided or failed to provide professional advice.

#### The following Exclusions apply only to Section 3 (Corporate Legal Liability Cover and Company Extensions):

The Insurer shall not be liable to make any payment for Loss under any Corporate Legal Liability Cover or Company Extension:

#### 5.6. Pollution

arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of, or records concerning, **Pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**.

This Exclusion 5.6 (Pollution) shall not apply to Company Extension 3.3(ii) (Company Pollution Condition Defence Costs).

#### 5.7. Intellectual Property Rights

in connection with any **Claim** or other **Insured Event** made for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

#### 5.8. Anti-competitive Practices

in connection with any **Claim** or other **Insured Event** made for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

**5.9. Employment Practices Liability**

arising out of, based upon or attributable to an **Employment Practices Violation**.

**5.10. Benefits**

arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, pension benefits or any similar law or obligation whatsoever.

**5.11. Contract**

arising out of, based upon or attributable to any liability of any **Company** under any express oral or written contract or agreement.

This Exclusion 5.11 (Contract) shall not apply to:

- (i) any liability that would have attached in the absence of such contract; or
- (ii) any **Defence Costs** in connection with Corporate Legal Liability Cover and Company Extension 3.3(iii) (Breach of Contract).