

Directors and Officers Insurance for Private Companies

Policy

To be solid, insurance must be flexible.

Directors & Officers Insurance for Private Companies

Contents

	Page
1. Insuring Clauses and Definitions	4
Insuring Clause 1: Directors and Officers Cover	4
Insuring Clause 2: Organisation Indemnification Cover	4
Insuring Clause 3: Court Attendance Costs	4
Definitions	4
2. Additional Policy Features	12
2.1 Acquisition or Creation of Another Organisation	12
2.2 Acquisition of the Policyholder	12
2.3 Offerings of Securities	12
2.4 Optional Management Buyout Cover	13
2.5 Subsidiaries	13
2.6 Additional Limit for Non-Indemnifiable Loss	13
2.7 Emergency Costs	13
2.8 Non-avoidance and Severability	13
2.9 Extended Reporting Period	14
2.10 Outside Directorships	15
2.11 Reporting to Regulators	15
2.12 Spouses, Partners and Estates	15
2.13 Option for Previous Policy Cover	16
3. Exclusions and Sanctions	17
3.1 Exclusions	17
3.2 Severability of Exclusions	17
3.3 Sanctions	17

Directors & Officers Insurance for Private Companies

4. Limits of Liability and Payment of Loss	18
4.1 Limits of Liability	18
4.2 Deductible	18
4.3 Related Claims	18
4.4 Allocation of Loss	19
4.5 Order of Payments	19
4.6 Other Insurance	19
5. General Terms	20
5.1 Reporting	20
5.2 Notice	20
5.3 Defence and Settlement	21
5.4 Territory	21
5.5 Subrogation	21
5.6 Authorisation Clause	21
5.7 Alteration and Assignment	21
5.8 Rights of Action	21
5.9 Termination	21
5.10 Choice of Law and Forum	22
5.11 Regulatory Information	22
5.12 Complaints	22

Endorsements issued at inception are attached to the Schedule.

Directors & Officers Insurance for Private Companies

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

1. Insuring Clauses

Insuring Clause 1: Directors and Officers Cover

1. The **Insurer** shall pay to or on behalf of each **Insured Person**, **Loss** or **Investigation Costs** to the extent that he or she is not indemnified for that **Loss** or those **Investigation Costs**.

Insuring Clause 2: Organisation Indemnification Cover

2. The **Insurer** shall pay to or on behalf of or reimburse each **Organisation**, **Loss** or **Investigation Costs** to the extent that it has indemnified an **Insured Person** for that **Loss** or those **Investigation Costs**.

Insuring Clause 3: Court Attendance Costs

3. With regard to each **Claim**, **Loss** which is covered by this Policy:
 - (a) the **Insurer** shall, if a director, officer or employee of an **Organisation** attends a court or arbitration hearing as a witness, compensate the **Policyholder** by paying £150 per day for that person's attendance as a witness;
 - (b) the **Insurer** shall, if a director, officer or employee of an **Organisation** attends a court or arbitration hearing as observer, compensate the **Policyholder** by paying £150 per day for that person's attendance as an observer, but the **Insurer** will only pay for one observer per day.

Compensation provided for by this Insuring Clause is only payable where that attendance is in connection with defending, not prosecuting, a **Claim** and the **Insurer** shall pay the costs to the **Policyholder**.

The **Insurer's** maximum liability for all **Court Attendance** on account of all **Claims** first made during the **Policy Period** whether involving one or any number of **Insureds**, shall not exceed £50,000. The **Insurer** shall only pay **Court Attendance** in respect of a **Claim** to the extent that the relevant **Any One Claim Limit** remains unexhausted. Payment by the **Insurer** of **Court Attendance** in respect of that **Claim** shall erode that **Any One Claim Limit**.

Definitions

When used in bold type in this Policy:

Additional Insured Costs means **Bail Bond Costs, Challenge Costs, Extradition Crisis Costs, Media Costs, Mitigation Costs, Relative Costs** and **Subpoena Costs**.

Admission means:

- (a) a formal written admission;
- (b) an oral admission made in a court hearing, tribunal hearing, arbitration hearing or regulatory hearing; or
- (c) an oral admission made under oath, affirmation or similar process where law or regulation requires statements to be made truthfully.

Directors & Officers Insurance for Private Companies

Application means:

- (a) all proposal forms and documents provided to the **Insurer** by or on behalf of the **Policyholder** or any other **Insured**, or to which the **Insurer** was referred by or on behalf of the **Policyholder** or any other **Insured**, in the process of applying for this Policy; and
- (b) all representations to the **Insurer** by or on behalf of the **Policyholder** or any other **Insured**, in the process of applying for this Policy.

Any One Claim Limit means the Limit of Liability for any one **Claim** for this Section 2 stated in Item 2(A) of the Schedule.

Approved Person means any natural person employed by an **Organisation** to whom the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA), or its predecessors or successors, have given its approval to perform the Controlled Functions pursuant to Section 59 (Approval for Particular Arrangements) of the Financial Services and Markets Act 2000 (FSMA) or equivalent functions anywhere in the world.

Bail Bond Costs means reasonable premium for a bail bond, or any other financial instrument to guarantee an **Insured Person's** observance of bail conditions, required by a court in a **Claim**.

Challenge Costs means that part of **Loss** consisting of reasonable legal fees and related professional charges, arising from a **Claim** first made during the **Policy Period** and incurred personally by an **Insured Person** to bring legal proceedings to overturn:

- (a) an interim or interlocutory judicial order for the confiscation of, assumption of ownership and control of, or freezing of, any asset of such **Insured Person**;
- (b) an interim or interlocutory judicial charging order over any asset of such **Insured Person**;
- (c) an interim or interlocutory judicial order disqualifying such **Insured Person** from holding office or from managing a company; or
- (d) a judicial order requiring such **Insured Person** to be confined to a specified domestic residence or held in custody pending trial of that **Claim**.

Civil Fines and Penalties means fines and penalties which are non-criminal and insurable under the jurisdiction most favourable to insurability to which the **Insurer**, the **Insured** incurring the fines or penalties or the **Claim** giving rise to them has a substantial relationship.

Claim means:

- (a)
 - (i) a written demand for specific monetary compensation or specific non-pecuniary relief;
 - (ii) a civil proceeding including third party proceeding, counterclaim, arbitration proceeding or employment tribunal proceeding;
 - (iii) a criminal proceeding;
 - (iv) an extradition proceeding; or
 - (v) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges,
made against an **Insured Person**, alleging a **Wrongful Act**; or;
- (b) an **Investigation**.

Directors & Officers Insurance for Private Companies

Court Attendance means compensation provided for by Insuring Clause 3.

Defence Costs means that part of **Loss** consisting of reasonable costs, expenses, charges and fees incurred in defending or investigating a **Claim** (as defined in (a) in the definition of **Claim**) first made during the **Policy Period** or in appealing against a judgment made in such a **Claim**. **Defence Costs** does not include internal corporate costs and expenses but does also include:

- (a) reasonable premium paid for insurance instruments or for bonds which are required to institute an appeal; and
- (b) **Bail Bond Costs**,

but without any obligation to provide or procure any instrument or bond.

Employment Claim means a **Claim** (as defined in (a) in the definition of **Claim**) by an **Insured Person** or past, present or prospective employee of an **Organisation** or of an **Outside Entity**, or brought by any government authority regulating employment practice, based upon or arising out of an actual or alleged, wrongful or unfair, employment related: discipline, dismissal, discharge or termination of employment, breach of an oral or written contract, misrepresentation, discrimination (including harassment), failure to employ or promote, deprivation of a career opportunity, failure to grant tenure, evaluation, invasion of privacy, defamation, infliction of emotional distress, or retaliation in respect of whistle blowing or of the exercise or attempted exercise of legally protected rights.

Extradition Crisis Costs means that part of **Loss** consisting of reasonable costs, expenses, charges and fees, incurred with the prior written consent of the **Policyholder**, of an accredited counsellor or tax adviser engaged to counsel or advise an **Insured Person** directly in connection with the extradition proceedings part of a **Claim** first made during the **Policy Period**.

Indemnifiable means not prevented:

- (a) by law or insolvency; or
- (b) by an **Organisation's** constitution, memorandum or articles of association, bylaws, shareholder resolutions, or board or other governing body resolutions,

from being indemnified or reimbursed by an **Organisation**.

Insured means a person who is an **Organisation** or an **Insured Person**.

Insured Capacity means;

- (a) with regard to an **Insured Person** as defined in (a) or (c) of the definition of **Insured Person**, performance of the functions, duties and responsibilities for which such **Insured Person** has been retained, appointed or employed by an **Organisation**;
- (b) with regard to an **Insured Person** as defined in (b) of the definition of **Insured Person**, the capacity of **Shadow Director** of an **Organisation**.

Insured Person means a natural person who was, is or becomes:

- (a) a director (including a de facto director) or officer, or the equivalent in any jurisdiction, or an **Approved Person**, of an **Organisation**;
- (b) a **Shadow Director** of an **Organisation** by virtue of being a director, officer or employee of another **Organisation**; or
- (c) an employee of an **Organisation**, but only:

Directors & Officers Insurance for Private Companies

- (i) with respect to an **Employment Claim**;
- (ii) to the extent that such employee is acting in any managerial or supervisory capacity or **Outside Directorship**; or
- (iii) with respect to any **Claim** in which such employee is named as a co-defendant with a director or officer, or the equivalent in any jurisdiction, of an **Organisation**.

Insured Person does not include externally appointed auditor, insolvency administrator or receiver, bankruptcy trustee or liquidator of an **Organisation**.

Insurer means MPR Underwriting Limited.

Investigation means:

- (a) a formal investigative inquiry which is:
 - (i) into the conduct of an **Organisation** or into the conduct, in his or her **Insured Capacity**, of an **Insured Person**; and
 - (ii) instituted by a governmental, regulatory, law enforcement, professional or statutory body with powers to investigate that **Organisation** or **Insured Person**;
- (b) an interview of, or meeting with, an **Insured Person** in his or her **Insured Capacity** and requested by a governmental, regulatory, law enforcement, professional or statutory body in connection with an investigation by that body;
- (c) an interview of, or meeting with, an **Insured Person** in his or her **Insured Capacity** and requested by an **Organisation** in connection with an investigation, raid or visit by a governmental, regulatory, law enforcement, professional or statutory body; or
- (d) an interview of, or meeting with, an **Insured Person** in his or her **Insured Capacity** and requested by an **Organisation** in connection with a formal written notification by that **Organisation** to a governmental, regulatory, law enforcement, professional or statutory body with powers to investigate that **Organisation** or **Insured Person** of suspected material breach of a legal or regulatory duty by that **Insured Person** in his or her **Insured Capacity**, if and to the extent that such inquiry is requested by an **Official Body**.

Investigation does not include any inquiry, interview or meeting which is part of a routine or regularly scheduled oversight, compliance, audit or inspection procedure of a governmental, regulatory, law enforcement, professional or statutory body.

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

Investigation Costs means that part of **Loss** consisting of reasonable legal representation fees and related professional charges which an **Insured Person** incurs personally and solely for the purposes of his or her own representation at an **Investigation** which is first made during the **Policy Period** and which are only incurred:

- (a) in the case of an inquiry described in (a) of the definition of **Investigation**, after that **Insured Person** has been notified in writing by the body which has instituted the inquiry that it is looking into whether or not that **Insured Person** is culpable of misconduct or that it requires that **Insured Person** to attend that inquiry;
- (b) in the case of an interview or meeting described in (d) of the definition **Investigation**, after that **Insured Person** has received the request for the interview or meeting and the formal written notification described in (d) of the definition of **Investigation** has been given.

Directors & Officers Insurance for Private Companies

Investigation Costs does not include any costs or expenses of producing, disclosing, or giving discovery of, documents and does not include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Organisation**.

Loss means:

- (a) for a **Claim** which is not an **Investigation** the amount which an **Insured Person** is legally liable to pay on account of a **Claim** first made during the **Policy Period** including:
 - (i) **Defence Costs**;
 - (ii) awards of damages, judgments, pre- and post- judgment interest, awards of claimant's costs and sums payable pursuant to any settlements (including punitive, exemplary or aggravated damages, and the multiple portion of any multiplied damages award, but only to the extent that such damages or multiple portion are insurable under the jurisdiction most favourable to insurability to which the **Insurer**, that **Insured Person** or the **Claim** giving rise to the damages or multiple portion has a substantial relationship); and
 - (iii) **Additional Insured Costs (Bail Bond Costs, Challenge Costs, Extradition Crisis Costs, Media Costs, Mitigation Costs, Relative Costs and Subpoena Costs)**.
- (b) for a **Claim** which is an **Investigation**, **Investigation Costs**;

Loss does not include:

- (i) matters (other than **Civil Fines and Penalties**, punitive, exemplary or aggravated damages and the multiple portion of any multiplied damages award) uninsurable under English law;
- (ii) fines or penalties (other than **Civil Fines and Penalties**); or
- (iii) taxes or damages reflecting taxes (other than such taxes or damages for which an **Insured Person** is not **Indemnifiable** and which are on account of a **Claim** against that **Insured Person** seeking to make that **Insured Person** personally liable for non-payment of taxes due from that **Insured Person's Organisation**).

Media Costs means that part of **Loss** consisting of reasonable costs, expenses, charges and fees, incurred with the prior written consent of the **Insurer**, of an independent public relations consultant engaged to advise an **Insured Person** on making a public communication with respect to, or for preventing or minimising business disruption and adverse publicity resulting from, a **Claim** (including in connection with extradition proceedings) first made during the **Policy Period**, including the costs of disseminating findings made in a judicial disposition of that **Claim** which exonerates the **Insured Person** from fault, liability or culpability.

Merger Acquisition means the acquisition by the **Policyholder** of another organisation by that other organisation merging into or consolidating with the **Policyholder**.

Mitigation Costs means that part of **Loss** consisting of reasonable costs, expenses, charges and fees, incurred with the prior written consent of the **Insurer** to 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 D&O Claim** against an **Insured Person** which, if it were to become a **Claim**, would give rise to a covered **Loss** under this Policy, provided that:

- (i) the circumstances resulting in the payment, costs or expenses are reported in accordance with Section 5.1 (Reporting) of this Policy; and
- (ii) 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 **Claim**; and

Directors & Officers Insurance for Private Companies

- (iii) the liability of the **Insurer** under **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
- (iv) the onus of proving that any **Potential D&O Claim** would be covered under **Mitigation Costs** shall rest with the **Insured**.

Organisation means an organisation which is the **Policyholder** or a **Subsidiary**.

Outside Directorship means the position of director, officer, trustee (but not a pension trustee), governor, or the equivalent in any jurisdiction, held by an **Insured Person** in his or her **Insured Capacity** in an **Outside Entity** provided that such position is assumed and maintained with the knowledge and consent of, or at the specific request of, an **Organisation**.

Outside Entity means an organisation:

- (a) which is incorporated; or
- (b) which is a non-profit organisation, a trade association or a registered charity.

Outside Entity does not include an organisation:

- (i) which is within the definition of **Organisation**;
- (ii) which has any of its debt securities or equity securities publicly traded in the **USA**, or which is incorporated or domiciled in the **USA**, unless included by endorsement; or
- (iii) which carries on any financial services business, including, but not limited to, the provision of banking, clearing, credit, brokerage, investment or insurance services.

Personal Injury means bodily injury, mental illness or emotional distress (except emotional distress with respect to any **Employment Claim**), sickness, disease or death of any natural person.

Policy Period means the period of time stated in Item 7 of the Schedule.

Policy Period Limit means the Limit of Liability for each **Policy Period** in Item 2 of the Schedule.

Policy Period Sublimit means a Sublimit for each **Policy Period** stated in Item 5 of the Schedule or in any endorsement or part in this policy.

Policyholder means the entity stated in Item 1 of the Schedule.

Pollutants means 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 and any noise.

Pollution means:

- (a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any **Pollutants**; or
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

Directors & Officers Insurance for Private Companies

Potential D&O Claim means a complaint or allegation of a **Wrongful Act** by or on behalf of a potential claimant which does not constitute a **Claim**, but may subsequently give rise to a **Claim**.

Previous Policy means the directors and officers policy, or directors and officers liability section of a management liability policy issued to the **Policyholder** by an insurer other than the **Insurer** for the policy period ending the day before the start of the **Policy Period** and which this Policy directly replaces.

Property Damage means damage or impairment to, or destruction or loss of use of, any property.

Relative means a parent, spouse, civil partner (as defined in the Civil Partnership Act 2004), son or daughter of an **Insured Person**.

Relative Costs means that part of **Loss** consisting of reasonable travel and accommodation costs and expenses incurred by an **Insured Person** for the attendance of one **Relative** of that **Insured Person** at the hearing of a **Claim** (not **Investigation**) first made during the **Policy Period** if the hearing takes place in a country where that **Insured Person** is not resident.

Retired Insured Persons means **Insured Persons** who have ceased to act in their **Insured Capacity** prior to the expiry of the **Policy Period** for reasons other than:

- (a) disqualification, on grounds relating to fitness or propriety, from holding office or from managing a Insurer;
- (b) merger or consolidation into, or acquisition by, another organisation; or
- (c) insolvency of an **Organisation**.

Shadow Director means a shadow director, as defined in Section 251 of the Companies Act 2006, or the equivalent in any jurisdiction.

Subpoena means a subpoena or witness summons served on an **Insured Person** in his or her **Insured Capacity**, seeking:

- (a) the production of information by that **Insured Person** (whether that information is contained, or alleged to be contained, in documents or any other medium); or
- (b) that **Insured Person's** attendance to give evidence,

for the purposes of a **Claim** first made during the **Policy Period**.

Subpoena Costs means that part of **Loss** consisting of reasonable legal representation fees and related professional charges which an **Insured Person** incurs personally in producing information sought by, or in attending to give evidence sought by, a **Subpoena** (excluding include internal corporate costs or expenses).

Subsidiary means a company in which the **Policyholder** directly and/or indirectly:

- (a) holds a majority of the voting rights;
- (b) has the right to appoint or remove a majority of the board of directors; or
- (c) controls alone, pursuant to a written agreement with other shareholders, a majority of the voting rights.

Subsidiary also means a **Subsidiary** or **Subsidiaries** of an **Organisation** other than the **Policyholder** as well as any foundation or not-for-profit entity established and maintained by the **Policyholder**.

Substitutable Cover Terms means those terms of the **Previous Policy** which are the **Previous Policy's** equivalents to the terms of this policy.

Directors & Officers Insurance for Private Companies

USA means the United States of America, its territories and possessions and any state or political subdivision thereof.

USA Claim means a **Claim** brought or maintained, in whole or in part, in the **USA** or based, in whole or in part, on any law of the **USA**.

Wrongful Act means any wrongful act or omission, error, misstatement, misleading statement, neglect or breach of duty committed, attempted or proposed to be committed (or allegedly committed, attempted or proposed to be committed) by an **Insured Person**, individually or otherwise, in his or her **Insured Capacity**, or any matter claimed against him or her solely by reason of his or her serving in such **Insured Capacity**.

Directors & Officers Insurance for Private Companies

2. Additional Policy Features

Acquisition or Creation of Another Organisation

2.1 If, during the **Policy Period**, an **Organisation**:

- (a) acquires securities or voting rights in another organisation which as a result of such acquisition becomes a **Subsidiary**;
- (b) creates an organisation which as a result of such creation becomes a **Subsidiary**; or
- (c) acquires any organisation by merger into or consolidation with that **Organisation**,

then that organisation and its **Insured Persons** shall automatically become **Insureds** under this Policy with effect from the date of such acquisition or creation but only with respect to **Wrongful Acts** after, and (as concerns **Investigations**) conduct after, such acquisition or creation. The **Insurer** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Insurer** may require.

If such organisation described in (a) or (c):

- (i) has gross consolidated assets that increase the total consolidated assets of all the **Organisations** together by more than 25%; or
- (ii) has any of its debt securities or equity securities publicly traded in the **USA**, or is incorporated or domiciled in the **USA**,

for that organisation and its **Insured Persons** to become **Insureds** under this Policy, the **Policyholder** must give written notice of that acquisition, and such information as the **Insurer** may require, to the **Insurer**. The **Insurer** shall have the right to amend the terms of this Policy including charging an additional premium.

Acquisition of the Policyholder

2.2 If, during the **Policy Period**:

- (a) the **Policyholder** merges into or consolidates with another organisation (other than in a **Merger Acquisition**); or
- (b) a person or persons acting in concert (other than a liquidator, receiver, administrative receiver, administrator, supervisor or other insolvency office-holder) acquires or secures ownership or voting control of more than 50% of the outstanding securities representing the present right to vote for the election of the members of the board of directors of the **Policyholder**,

cover for the **Organisations** and their **Insured Persons** shall continue until the end of the **Policy Period**, but only for **Wrongful Acts** prior to, and (as concerns **Investigations**) conduct prior to, such merger, consolidation or acquisition.

Offerings of Securities

2.3 If, during the **Policy Period**, an **Organisation** makes a public offering of its debt securities or equity securities, the **Policyholder** shall provide the **Insurer** with the prospectus or offering document no later than 30 days prior to the offering taking place together with any additional information the **Insurer** may require. The **Insurer** shall have the right to amend the terms of this Policy including charging an additional premium.

Directors & Officers Insurance for Private Companies

Optional Management Buy Out Cover

- 2.4 If, during the **Policy Period**, a **Subsidiary** completes a management buy-out and upon written instruction from the **Policyholder** prior to such event that cover for such **Subsidiary** is required, this policy shall continue to provide cover for **Wrongful Acts** committed after such buy-out for a period of 45 days, subject to the **Policy Period** or extended reporting period. This extension shall not apply in circumstances where there is other insurance in force which provides cover in respect of such **Wrongful Acts** or conduct.

Subsidiaries

- 2.5 If an organisation ceases to be a **Subsidiary** before or during the **Policy Period**, there will be cover under this Policy for such **Subsidiary** and its **Insured Persons**.

With respect to each **Subsidiary** and its **Insured Persons**, cover under this Policy shall apply only for **Wrongful Acts**, and (as concerns **Investigations**) conduct, at a time when the **Subsidiary** is a **Subsidiary**. The **Insurer** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Insurer** may require.

Additional Limit for Non-Indemnifiable Loss

- 2.6 The **Insurer** shall, from the moment when **Loss** paid by the **Insurer** under this Policy reaches an amount equal to the amount stated in Item 2 (A) of the Schedule, have a further liability for **Insured Persons' Loss** for which **Insured Persons** are not **Indemnifiable**, provided that:
- (a) the **Insurer** shall not have that further liability until all valid and collectable insurance written specifically excess of this Policy has been exhausted by payment under such excess insurance; and
 - (b) the maximum amount of that further liability on account of all **Claims** first made during the **Policy Period**, whether involving one or any number of **Insureds**, shall not exceed the Non-Indemnifiable **Loss** Additional Limit of Liability for each **Policy Period** stated in Item 4 of the Schedule.

Emergency Costs

- 2.7 Notwithstanding the provisions of Section 5.3 below, if, because of an emergency, the **Insurer's** prior written consent to incurring **Defence Costs**, **Investigation Costs** or **Additional Insured Costs** on account of a **Claim** cannot be requested, **Defence Costs**, **Investigation Costs** or **Additional Insured Costs** can be incurred without that consent for work performed during the period of 30 days immediately following the date on which the **Claim** was first made.

Non-avoidance and Severability

- 2.8 This Policy is severable and covers each **Insured** in respect of their own individual interest.

In respect of the **Application**, no statements made or information possessed by any **Insured** shall be imputed to any **Insured Person** for any reason.

In the event of a fraudulent or dishonest breach of the duty of fair presentation by any **Insured** determined by admission, final non-appealable judgment or adjudication:

- (i) if the breach occurs prior to the inception date of the Policy, the **Insurer** may avoid the contract and refuse all claims, and need not return any of the premiums paid, in respect of such **Insured**;

Directors & Officers Insurance for Private Companies

- (ii) if the breach is in relation to a variation of the Policy, the **Insurer** may treat the Policy as if the variation was never made and need not return any of the premiums paid in respect of the variation, in respect of such **Insured**.

It is agreed that in the event of a breach of the duty of fair presentation by an **Insured**, which is not fraudulent or dishonest, the **Insurer** irrevocably waives all and any rights and remedies it may have because of such breach, including any remedy that would have been available under the UK Insurance Act 2015. For the purposes of this clause, the phrase "duty of fair presentation" shall have the same meaning as given to it in the UK Insurance Act 2015.

The **Insurer** further agrees that:

- (i) the **Insured** has provided no warranties in connection with this Policy; and
- (ii) no term of this Policy is intended or shall be construed as having warranty status within the meaning of the UK Insurance Act 2015.

Extended Reporting Period

- 2.9 (a) If the **Insurer** or the **Policyholder** refuses to renew this Policy for any reason other than non-payment of premium, or because of merger or consolidation into, or acquisition by, another organisation, then the **Insured** will be entitled to purchase one of the following extended reporting periods;
- (i) 12 months for 75% of the annual premium;
 - (ii) 24 months for 100% of the annual premium;
 - (iii) 36 months for 125% of the annual premium; or
 - (iv) 72 months for 150% of the annual premium.

Written notice of election and payment of premium must be received within 60 days of the expiry of the **Policy Period**. This extended reporting period shall commence from the expiry date of the **Policy Period** and shall apply only to **Wrongful Acts** prior to, and (as concerns **Investigations**) conduct prior to, that date.

- (b) If, during the **Policy Period**, the **Policyholder** merges or consolidates into, or is acquired by, another organisation, then the **Insured** will be entitled to purchase one of the following extended reporting periods;
- (i) 12 months for 100% of the annual premium;
 - (ii) 36 months for 125% of the annual premium; or
 - (iii) 72 months for 150% of the annual premium.

Written notice of election and payment of premium must be received within 60 days following that merger or consolidation or acquisition. This extended reporting period shall commence from the date at which that merger or consolidation or acquisition arises and shall apply only to **Wrongful Acts** prior to, and (as concerns **Investigations**) conduct prior to, that date.

- (c) If the **Insurer** or the **Policyholder** refuses to renew this Policy then the **Retired Insured Persons** shall obtain an unlimited extended reporting period. This extended reporting period shall commence from the expiry date of the **Policy Period** and shall, for each **Retired Insured Person**, apply only to **Wrongful Acts** prior to, and (as concerns **Investigations**) conduct prior to, the date on which that **Retired Insured Person** became a **Retired Insured Person**. This extended reporting period shall only be provided:
- (i) when this Policy is not renewed or replaced with directors and officers liability cover (or directors and officers liability section of cover); or
 - (ii) where this Policy is renewed or replaced with directors and officers liability cover (or directors and officers liability section of cover), such renewal or replacement policy does not provide an extended discovery period of at least 6 years for such **Retired Insured Persons**.

Directors & Officers Insurance for Private Companies

If no election is made under Section 2.9 (a) above, the **Policyholder** and the **Insured Persons** shall obtain an extended reporting period of 60 days. This extended reporting period shall commence from the expiry date of the **Policy Period** and shall apply only to **Wrongful Acts** prior to, and (as concerns **Investigations**) conduct prior to, that date.

A **Claim** first made during an obtained extended reporting period shall be deemed to have been first made during the **Policy Period**.

Outside Directorships

- 2.10 Subject to the other terms of this Policy, cover under Insuring Clauses 1 and 2 is extended to cover **Loss** arising out of an **Outside Directorship** provided that:
- (a) the **Insurer's** liability for each **Claim** shall apply only to that part of the **Loss** which is excess of:
 - (i) all other valid and collectable insurance payable;
 - (ii) the amount of the **Loss** for which the **Insured Person** serving in such **Outside Directorship** is indemnified by the **Outside Entity**; and
 - (iii) the applicable Deductible stated in Item 6 of the Schedule; and
 - (b) such cover is not extended to **Loss** arising out of an **Outside Directorship** on account of any **USA Claim** by or on behalf of the **Outside Entity** in which that **Outside Directorship** is or was held or any director, officer, trustee, governor, or equivalent in any jurisdiction, of that **Outside Entity** except:
 - (i) an **Employment Claim**;
 - (ii) a derivative claim, derivative proceeding or derivative action on behalf of an **Outside Entity** by a securityholder of that **Outside Entity** in their capacity as such;
 - (iii) a **Claim** by or on behalf of an **Outside Entity** due to its insolvency;
 - (iv) a **Claim** against an **Insured Person** who is no longer acting in an **Insured Capacity** when that **Claim** is first made; and
 - (v) **Defence Costs**; and
 - (c) such cover is not extended to **Loss** arising out of an **Outside Directorship** on account of any **Claim** which is for **Wrongful Acts** at a time when such **Insured Person** is not serving in the **Outside Directorship** or on account of any **Investigation** which is an inquiry into conduct at a time when such **Insured Person** is not serving in the **Outside Directorship**.

Reporting to Regulators

- 2.11 For the avoidance of doubt, an **Insured** reporting to a governmental, regulatory, law enforcement, professional or statutory body (including, but not limited to, a health and safety authority) conduct which might give rise to a **Claim** shall not constitute an admission of liability with regard to such **Claim**.

Spouses, Partners and Estates

- 2.12 Solely for the **Wrongful Act** of a natural person described in the definition of **Insured Person**, the definition of **Insured Person** is extended to include such natural person's:

Directors & Officers Insurance for Private Companies

- (a) lawful spouse, civil partner (as defined in the Civil Partnership Act 2004) or domestic partner, if named as co-defendant solely because of his or her spousal relationship or relationship as civil partner or domestic partner; and
- (b) estate, heirs, legal representatives or assigns, if such natural person is deceased or declared incompetent, insolvent, or bankrupt.

Option for Previous Policy Cover

2.13 The provisions of this Section 2.13 shall only be effective if the **Policyholder** provides to the **Insurer**, before the start of the **Policy Period**, a complete and accurate copy of the **Previous Policy** including all schedules and endorsements thereto and variations thereof and the **Insurer** confirms in writing that the provisions of this Section 2.13 are effective.

Within 30 days of the **Insurer** being given written notice of a **Claim** in accordance with Section 5.1, the **Policyholder** may give to the **Insurer** a written notice requesting coverage conversion, whereupon all the **Substitutable Cover Terms** shall apply to that **Claim**, and all **Claims** deemed with it to be a single **Claim**.

Any matter which is not within a definition of **Claim** but would be if it was defined in the same way as an equivalent definition in the **Previous Policy's** equivalent cover, shall be regarded as within this Policy's definition of **Claim** for the purposes of allowing the **Policyholder** to report it in accordance with Section 5.1 and of requesting coverage conversion such that, if it is reported and coverage conversion is requested in accordance with this Section it shall be deemed a **Claim** to be dealt with under the terms of this Policy but with all the **Substitutable Cover Terms** in place of all the equivalent terms of this Policy.

No term of the **Previous Policy** which stipulates a deductible, excess or retention, a main policy period limit of liability, a main any one claim or any one loss or any one event limit of liability or a limit of liability in addition to any aforementioned main limit, wherever in the **Previous Policy** such term may appear (whether in a schedule, a limits of liability clause, an insuring clause, an endorsement or otherwise), shall be a **Substitutable Cover Term** and all sublimits of liability stipulated in the **Previous Policy** (other than one which is greater in amount than an applicable **Policy Period Limit**) shall be **Substitutable Cover Terms**.

Directors & Officers Insurance for Private Companies

3. Exclusions and Sanctions

Exclusions

- 3.1 The **Insurer** shall not be liable for **Loss** on account of any **Claim**:
- (a) based upon, arising from or in consequence of any fact or **Wrongful Act** forming part of circumstances or of a **Claim** of which written notice has been accepted under any policy which this Policy renews, replaces or follows in whole or in part;
 - (b) based upon, arising from, attributable to or derived from substantially the same facts or circumstances alleged in, any pending or prior proceedings of any nature against any **Insured** or **Outside Entity** commenced before the date stated in Item 5 of the Schedule;
 - (c) seeking remedy for **Personal Injury** or **Property Damage** (this exclusion shall not apply to **Defence Costs** on account of a proceeding for manslaughter or any other alleged breach of occupational health and safety law, or in respect of **Defence Costs** which are not **Indemnifiable**);
 - (d) seeking remedy for breach of any law, duty or trust by an **Insured Person** in his or her capacity as trustee, fiduciary or administrator of any superannuation, pension, profit sharing, health and welfare or other employee benefit scheme, programme, plan or trust established or maintained to provide benefits to employees or directors;
 - (e) based upon, arising from or in consequence of any deliberate fraudulent act or omission or any intentional breach of law by such **Insured Person**, if there is a finding (but not one applied for by the **Insurer**) of such fraud or breach in a final non-appealable judgment or adjudication or if such **Insured Person** makes an **Admission** of such fraud or breach;
 - (f) based upon, arising from or in consequence of such **Insured Person** having gained any personal profit, remuneration or advantage to which such **Insured Person** was not legally entitled, if there is a finding (but not one applied for by the **Insurer**) of such gain in a final non-appealable judgment or adjudication or if such **Insured Person** makes an **Admission** of such gain;
 - (g) which is a **USA Claim** by or on behalf of any **Organisation** except:
 - (i) a **Claim** by or on behalf of an **Organisation** due to its insolvency;
 - (ii) a **Claim** against an **Insured Person** who is no longer acting in an **Insured Capacity** when that **Claim** is first made; and
 - (iii) **Defence Costs**;
 - (h) based upon, arising from or in consequence of **Pollution** except **Defence Costs**, up to the sublimit for **Pollution Defence Costs** stated in Item 5 of the Schedule.

Severability of Exclusions

- 3.2 For purposes of determining whether an exclusion in Section 3.1 above applies, no conduct of any **Insured Person** shall be imputed to any other **Insured Person**.

Sanctions

- 3.3 No cover or benefit shall be provided and no sum shall be payable under this Policy to the extent that providing or paying it would directly or indirectly put the **Insurer** in breach of any applicable economic or trade sanction laws or regulations.

Directors & Officers Insurance for Private Companies

Limits of Liability

- 4.1 The **Insurer's** maximum liability for all **Loss** and **Court Attendance**, whether covered under one or more of the Insuring Clauses and/or otherwise, on account of all **Claims** first made during the **Policy Period**, whether involving one or any number of **Insureds**, shall not exceed the **Policy Period Limit** together with the **Defence Costs** Additional Limit of Liability for the **Policy Period** stated in Item 3 of the Schedule.

On account of any one **Claim**, the **Insurer's** maximum liability for all **Loss** and **Court Attendance**, whether covered under one or more of the Insuring Clauses and/or otherwise, and whether that **Claim** involves one or any number of **Insureds**, shall not exceed the **Any One Claim Limit**. However, this is without prejudice to the **Defence Costs** Additional Limit of Liability for the **Policy Period** stated in Item 3 of the Schedule.

Further, on account of all **Claims** first made during the **Policy Period**:

- (a) the **Insurer's** maximum liability for all **Loss** in respect of which there is a **Policy Period Sublimit**; and
- (b) the **Insurer's** maximum liability for all **Court Attendance**,

whether covered under one or more of the Insuring Clauses and/or otherwise, and whether involving one or any number of **Insureds**, shall not exceed the relevant **Policy Period Sublimit**. **Policy Period Sublimits** are part of and not in addition to the maximum liabilities of the **Insurer** referred to above in this Section.

Defence Costs, **Investigation Costs** and **Additional Insured Costs** are part of and not in addition to the **Policy Period Limit** and the **Any One Claim Limit**. The payment by the **Insurer** of **Defence Costs**, **Investigation Costs** or **Additional Insured Costs** erodes those limits of liability. However, the payment by the **Insurer** of **Defence Costs** shall erode those limits of liability only after exhaustion of the **Defence Costs** Additional Limit of Liability for the **Policy Period** stated in Item 3 of the Schedule.

Amounts stated for limits and sublimits of liability are maximum liabilities of the **Insurer** for all **Insureds** together, not maximum liabilities per **Insured**.

Deductible

- 4.2 The **Insurer's** liability for each **Claim** shall apply only to **Loss** which is allocated to covered **Loss** and only to that part of **Loss** so allocated which is in excess of the applicable Deductible stated in Item 6 of the Schedule, which shall be borne by the **Insureds** uninsured and at their own risk.

Related Claims

- 4.3 All **Claims** directly or indirectly arising out of, consequent upon or attributable to one source or originating cause shall be deemed to be a single **Claim** first made on:
- (a) the date when the first of such **Claims** was first made; or
 - (b) the earliest date one of such **Claims** is deemed first made by this Policy or any policy which this Policy renews, replaces or follows in whole or in part (if that earliest date is earlier than the date referred to in (a) immediately above),

regardless of whether that date is before or during the **Policy Period**.

Directors & Officers Insurance for Private Companies

Allocation of Loss

4.4 If a **Claim** involves both covered matters and matters or persons that are not covered under this policy, there shall be allocated to covered **Loss** only that part of liability imputable to an **Insured Person** on account of covered matters.

If an **Insured** and the **Insurer** cannot agree on an allocation, the **Insurer**, if requested by the **Insured**, shall submit the dispute to binding arbitration before a panel, which shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

Order of Payments

4.5 For **Loss** payable during the **Policy Period** involving more than one insuring clause, the **Insurer** shall make payments in the following order:

- (1) the **Loss** of an **Insured Person** under Insuring Clause 1;
- (2) reimbursement of the **Loss** the **Organisation** has indemnified under Insuring Clause 2.

The insolvency of an **Organisation** shall not affect the priority of payments set out in this Clause.

Other Insurance

4.6 This policy shall always apply excess over any other more specific valid and collectable management liability insurance or indemnification available to the **Insured** or available to **Outside Entities**, other than any insurance specifically written to apply excess of this policy.

Directors & Officers Insurance for Private Companies

5. General Terms

Reporting

- 5.1 The **Insured** shall give the **Insurer** written notice of any **Claim** as soon as practicable but in no event more than 60 days after the earlier of the following dates:
- (i) the date on which any **Organisation's** Chairman, Chief Executive, Managing Director, Finance Director, General Counsel, Risk Manager, Head of Human Resources, Information Technology Manager or holder of an equivalent position to any of the foregoing, first becomes aware that the **Claim** has been made; and
 - (ii) if this Policy is not renewed, the termination date of the **Policy Period** or, if the **Claim** is first deemed made during the **Policy Period** because of an obtained extended reporting period, the termination date of that extended reporting period.

Each **Insured** shall give to the **Insurer** all such information and co-operation as the **Insurer** may reasonably require, including but not limited to a description of the **Claim**, the nature of the alleged **Wrongful Act** and the date it was committed, the nature of the alleged damage, the names of the claimants and defendants and the manner in which the **Insured** first became aware of the **Claim**.

If, during the **Policy Period** or an obtained applicable extended reporting period, an **Insured**:

- (i) becomes aware of circumstances which are likely to give rise to a **Claim**, and gives written notice of such circumstances to the **Insurer**; or
- (ii) receives a written request to waive application of a limitation period to, or to suspend the running of time towards expiry of a limitation period for the commencement of, a civil proceeding against an **Insured** alleging a **Wrongful Act** before or during the **Policy Period** and gives written notice of such request and of such alleged **Wrongful Act** to the **Insurer**,

then any **Claims** subsequently arising from such circumstances or following on from such request shall be deemed to have been first made during the **Policy Period**. Circumstances shall not be regarded as notified unless the written notice expressly identifies the **Wrongful Act** and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the **Insured** first became aware of the circumstances.

The **Insurer** shall not rely on breach of any of the **Insureds'** obligations in this Section to deny liability for any **Loss**. However, in the case of such breach, the **Insurer** shall not be liable for **Loss** which the **Insurer**, believes would not have been incurred if the breach had not occurred.

Notice

- 5.2 Written notices to the **Insurer** required by Section 5.1 above shall be sent by email to mprclaims@axiscapital.com or by post to the Claims Department at the **Insurer's** postal address.

The **Insurer's** postal address is:

MPR Underwriting Limited
10th Floor, Chancery Place, 50 Brown Street,
Manchester M2 2JG.

Notice shall be effective on the date of receipt by the **Insurer** by email or at the postal address.

Directors & Officers Insurance for Private Companies

Defence and Settlement

5.3 It shall be the duty of each **Insured** and not the duty of the **Insurer** to defend **Claims**. The **Insurer** shall have the right, and shall be given the opportunity to, associate with each **Insured** in the investigation, defence, negotiation and settlement of any **Claim, Loss** on account of which appears reasonably likely to be covered in whole or in part by this Policy.

Each **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs, Investigation Costs** or **Additional Insured Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably withheld.

The **Insurer** shall pay covered **Defence Costs**, covered **Investigation Costs** and covered **Additional Insured Costs** promptly upon the **Insurer's** receipt of suppliers' invoices.

Territory

5.4 Subject to all other terms of this Policy and unless law or regulation of any jurisdiction prevents the **Insurer** from paying, cover shall extend to **Claims** brought, maintained or occurring in any jurisdiction.

Subrogation

5.5 The **Insurer** shall be subrogated to the extent of any payment under this Policy to each **Insured's** rights of recovery, and each **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights and to enable the **Insurer** to bring proceedings in the name of that **Insured**.

Authorisation Clause

5.6 The **Policyholder** hereby agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claims** or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy (except for the **Insured Persons'** ability to elect to obtain an extended reporting period), and the **Insureds** agree that the **Policyholder** shall so act on their behalf.

Alteration and Assignment

5.7 No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy duly executed on behalf of the **Insurer**.

Rights of Action

5.8 No person other than the **Insured Persons** shall have any rights under or in connection with this Policy by virtue of the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof. Neither the **Policyholder** nor any **Insured Person** may assign to any other person any right or cause of action against the **Insurer** under or in connection with this Policy.

Termination

5.9 Cover under this Policy shall terminate at the earliest of the following times:

- (a) 7 days after the receipt by the **Policyholder** of a written notice of termination from the **Insurer** for non-payment of premium;

Directors & Officers Insurance for Private Companies

- (b) expiration of the **Policy Period** (but expiration of the **Policy Period** shall not terminate cover under an obtained extended reporting period);
- (c) receipt by the **Insurer** of written notice of termination from the **Policyholder**; and
- (d) such other time as may be agreed upon by the **Insurer** and the **Policyholder** in writing.

If, at the time of termination of cover under this Policy, no **Insured** has given notice of a **Claim** or of circumstances which are likely to give rise to a **Claim**, the **Insurer** shall refund the unearned premium:

- (i) computed at customary short rates, if cover under this Policy is terminated by the **Policyholder**; or
- (ii) computed pro-rata, if cover under this Policy is terminated other than by the **Policyholder**.

Choice of Law and Forum

- 5.10 The construction of the terms, and the validity and effect, of this Policy are governed by English law. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the exclusive jurisdiction of the courts of England and Wales.

Regulatory Information

- 5.11 This insurance is underwritten by MPR Underwriting Limited, Chancery Place, 50 Brown Street, Manchester, M2 2JG, on behalf of AXIS Specialty London, a UK branch of AXIS Specialty Europe SE, authorised and regulated by the Central Bank of Ireland and regulated by the Prudential Regulation Authority and Financial Conduct Authority in respect of UK business. AXIS Specialty Europe SE Registered Office: Mount Herbert Court, 34 Upper Mount Street, Dublin 2, Ireland: Registration No. 353402SE

Complaints

- 5.12 MPR Underwriting are committed to first class service. If you have any complaints about the service you have received, please contact your insurance broker or agent or MPR Underwriting Ltd at the address shown below:

10th Floor, Chancery Place, 50 Brown Street, Manchester, M2 2JG.

If your complaint relates to a claim on your policy, or any other matter, please contact Axis Specialty Europe SE at the address shown below:

Compliance Officer, AXIS Europe SE, 3rd floor, 71 Fenchurch Street, London, EC3M 4BS.

If you are dissatisfied with the final response to your complaint the Financial Ombudsman Service (FOS) may be approached for assistance in certain circumstances. A leaflet explaining their procedure is available on request. The FOS's contact details are:

The Financial Ombudsman Service, Exchange Tower, Harbour Exchange Square, London E14 9SR

Phone: 0800 023 4567

Email: complaint.info@financial-ombudsman.org.uk

This complaint procedure does not affect your rights to take legal proceedings.