

Angel Small Business Directors & Officers Liability Insurance

Form DOL2012-SB – Angel – February 2012

The word 'angel' in a lowercase, sans-serif font. The letter 'o' is highlighted in orange, while the other letters are black. A registered trademark symbol (®) is located at the top right of the letter 'l'.

Registered office: 20 Gracechurch Street, London, EC3V 0BG
Registered in England No. 5328622

Catlin Insurance Company (UK) Ltd. is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority

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Introduction

This **Policy** consists of the Introduction, Operative Clauses, Extensions, Definitions, Limit of Indemnity, Exclusions, Conditions, **Schedule** and endorsements, all of which are a single document and are to be read as one contract. Words shown in bold type are defined in section 3 Definitions and have the same meaning wherever they appear throughout this **Policy** unless stated otherwise.

This insurance is provided on the information received by the **Insurer** in the **Proposal** which is incorporated into and forms the basis of this **Policy**.

Please read the **Policy** carefully and make sure that it meets your needs. You should contact your broker immediately if any corrections are necessary.

Data Protection Act

Any information provided to the **Insurer** regarding the **Company**, **Director** or any **Employee** will be processed by the **Insurer**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

Third Party Rights

It is not the intention of this **Policy** that any party except the **Insurer** and those named or defined as insured herein or other parties specifically insured by this **Policy** should acquire any rights under or in relation to it nor be entitled to the benefit of any of its terms.

Complaints Procedure

Catlin Insurance Company (UK) Ltd. is dedicated to providing a high quality service and we want to ensure that we maintain this at all times. If you feel that you have not been offered a first class service or if you have any questions or concerns about the **Policy** or the handling of a **Claim** you should, in the first instance, contact your representative through whom this **Policy** was placed.

If you are unable to resolve the situation and wish to make a complaint you can do so at any time by referring the matter to:

Compliance Officer
Catlin Insurance Company (UK) Ltd.
20 Gracechurch Street
London, EC3V 0BG
Telephone Number: 020 7743 8487
Email: xlcatlinukcomplaints@xlcatlin.com

Complaints that cannot be resolved by the Compliance Officer may in certain circumstances be referred to the Financial Ombudsman Service at:

South Quay Plaza
183 Marsh Wall
London, E14 9SR
Tel No: 0800 0234 567
Email: complaint.info@financial-ombudsman.org.uk

Further details will be provided on request and at the appropriate stage of the complaints process.

1 Operative Clauses

The **Insurer** will pay on behalf of:

(a) Director's Liability

the **Director** all **Loss** that the **Director** is legally liable to pay;

(b) Corporate Reimbursement

- (i) the **Company** any **Loss** that the **Company** is legally required or permitted to pay the **Director** as advancement or indemnity under any applicable company law or agreement;
- (ii) the **Company** any such **Criminal Defence Costs and Expenses** that the **Company** is legally required or permitted to pay the **Director** as advancement or indemnity;

for a **Claim** against the **Director** arising from a **Wrongful Act** or an **Employment Practices Wrongful Act** provided that the **Claim** is first made against the **Director** during the **Period of Insurance** or discovery period if applicable.

(c) Defence and Investigation Costs

The **Insurer** will pay on behalf of the **Director**:

- (i) **Defence Costs and Expenses** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under Operative Clause 1 (a) and (b);
- (ii) **Defence Costs and Expenses** in the investigation of any circumstance(s) notified to the **Insurer** under the Notification condition which is (or are) likely to give rise to a **Claim**;
- (iii) **Defence Costs and Expenses** in the defence or investigation of an **Identity Theft Claim**;
- (iv) **Investigation Costs and Expenses**;
- (v) **Criminal Defence Costs and Expenses**;
- (vi) **Pollution and Contamination Defence Costs and Expenses**;
- (vii) **Extradition Proceedings Defence Costs and Expenses**;
- (viii) **Asset and Liberty Proceedings Defence Costs and Expenses**;
- (ix) **Public Relations Costs**.

(d) The **Insurer** will pay on behalf of the **Company** the **Shareholders Derivative Costs**.

2 Extensions

Subject to all other terms, conditions, exceptions, limits and exclusions of this **Policy**:

2.1 Additional Limit

In the event that payments are made exhausting the Limit of Indemnity and all other applicable insurance policies operating in excess of this **Policy**, and any other source available to provide indemnification for **Loss** to the **Director** has also been exhausted, then the **Insurer** agrees to provide to each **Director** an additional Limit of Indemnity for any subsequent **Claim** made within the **Period of Insurance**. Each such additional Limit of Indemnity is subject to the aggregate limit for all **Directors** of the amount stated in the **Schedule**.

Provided that:

- (a) the **Claim** is brought against a **Director**;
- (b) the **Claim** is payable under Operative Clause 1 (a).

2.2 Automatic Acquisition Cover

This **Policy** provides automatic cover for **Loss** arising out of a **Claim** against any **Director** of any newly created or acquired **Subsidiary**, including by merger, provided:

- (a) the **Total Gross Assets** of the **Company** at the commencement of the **Period of Insurance** are not increased by the acquisition or creation of such **Subsidiary** or **Subsidiaries** by more than 50%; and
- (b) any **Wrongful Act** takes place while the **Subsidiary** is a **Subsidiary** of the **Company**.

This extension shall not apply to any **Director** of a new **Subsidiary** that:

- (i) has its securities listed or traded on any exchange; or
- (ii) possesses any tangible or intangible asset located within the USA and /or Canada.

Where the coverage for the **Directors** of a newly created or acquired **Subsidiary** is not automatically conferred as a consequence of (a) or (b) above, then the **Company** may request that the **Policy** be extended to cover the **Directors** of such **Subsidiary** and the **Insurer**, at its sole discretion, may alter the terms and conditions of this **Policy** accordingly including the charging of an additional premium.

2.3 Discovery

In the event that, on the expiry of the **Period of Insurance**, this **Policy** is not renewed or replaced with any other policy cover broadly equivalent to this **Policy** in scope; there has not been an insolvency practitioner (or equivalent) appointed as a liquidator, administrator or receiver (or equivalent) of the **Company**; or a merger, consolidation or acquisition as detailed in the Takeovers and Mergers clause 2.8, then the **Director** may purchase a discovery period of 12 months immediately following the **Period of Insurance** so that for the purposes of Operative Clause 1, any **Claim** made in the discovery period shall be deemed to have been first made during the **Period of Insurance**. The right to purchase the discovery period shall terminate unless the **Insurer** receives within thirty days of the expiration of the **Period of Insurance** written notice of such election together with the additional premium due.

The discovery period shall be subject to the following conditions:

- (a) cover shall apply only in relation to a **Claim** arising out of a **Wrongful Act** occurring prior to the expiry of the **Period of Insurance**; and
- (b) there is no cover for any **Claim** arising out of a **Wrongful Act** occurring after the expiry of the **Period of Insurance**; and
- (c) the Limit of Indemnity for the **Period of Insurance** including the discovery period shall remain as set out in the **Schedule**; and
- (d) there is no cover unless payment of an additional premium equal to 50% for 12 months of the annual premium shown in the **Schedule** is made within thirty days of the expiry of the **Period of Insurance**; and
- (e) cover shall automatically lapse upon the **Director** or the **Company** effecting a Directors and Officers policy cover broadly equivalent to this **Policy** in scope; and
- (f) the premium for this extension is fully earned and non-refundable.

2.4 Emergency Defence Costs

In the event the **Director** is unable to contact the **Insurer** or their representatives to obtain consent to authorise **Defence Costs and Expenses** following a **Claim**, then, in relation to any **Claim** that may be covered by Operative Clause 1, the **Insurer** agrees to reimburse the **Director** for emergency **Defence Costs and Expenses** incurred during the period of up to fourteen days from the date the **Claim** was first made and up to the amount stated in the **Schedule**.

2.5 Outside Boards

This **Policy** shall extend to any **Wrongful Act** committed by a **Director** in their capacity of **Outside Director**, but only in excess of the aggregate of:

- (a) the amount of **Loss** the **Outside Director** serving on the outside board is indemnifiable by the outside entity.
- (b) any other potentially applicable cover, whether or not it actually responds.

2.6 Personal Appointments

This **Policy** shall extend to any actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by a

Director whilst serving in a personal capacity as a governor or trustee of a **School, Charity or Charitable Organisation** but only in excess of the aggregate of:

- (a) the amount of **Loss** indemnifiable by the **School, Charity or Charitable Organisation** to the **Director**; and
- (b) any other potentially applicable cover, whether or not it actually responds.

Provided that:

- (i) the **Director** is formally appointed on written authority; and
- (ii) the maximum aggregate payable by the **Insurer** shall not exceed the amount stated in the **Schedule**.

2.7 Retirement Run-off

In the event that, on the expiry of the **Period of Insurance**, this **Policy** is not renewed or replaced with any other Directors and Officers policy cover broadly equivalent to this **Policy** in scope, then any **Directors** who had voluntarily retired or resigned from the **Company** during the **Period of Insurance** or a previous policy with the **Insurer** which is linked by continuous renewal to this **Period of Insurance** shall automatically have a discovery period of 72 months immediately following the date of retirement in respect of any **Claim** covered under Operative Clause 1 (a). Any **Claim** made in this automatic discovery period shall be deemed to have been first made during the **Period of Insurance** and shall be subject to the following conditions:

- (a) cover shall apply only in relation to a **Claim** arising out of a **Wrongful Act** occurring prior to the date of their voluntary retirement or resignation; and
- (b) the maximum aggregate payable by the **Insurer** shall not exceed the amount stated in the **Schedule**; and
- (c) the automatic discovery period will run concurrently with any other discovery period; and
- (d) cover shall lapse in the event that the **Directors** who had voluntarily retired or resigned from the **Company** effects a Directors and Officers policy cover broadly equivalent to this **Policy** in scope; and

This extension does not apply to any Director who:

- (i) has been or is disqualified from holding the position of director; or
- (ii) has left the **Company** as a result of a merger, consolidation or acquisition as detailed in the Takeovers and Mergers clause 2.8; or
- (iii) has left the **Company** as a result of the appointment of an insolvency practitioner (or equivalent) appointed as a liquidator, administrator or receiver (or equivalent) of the **Company**.

2.8 Takeovers and Mergers Run-off

If during the **Period of Insurance** the **Company** merges with or consolidates into another entity or any person or entity acquires 50% or more of its issued share capital (other than by way of a **Management Buy Out**):

- (a) the **Policy** shall thereafter apply only to **Claims** resulting from **Wrongful Acts** occurring prior to the effective date of such merger, consolidation or acquisition; or
- (b) the **Company** may cancel the remainder of this **Policy** on behalf of the **Company** and all **Directors** by sending written notice to the **Insurer** at the address shown in the **Schedule**, stating the date from which the cancellation is to take effect; or
- (c) the **Company** may request that the **Policy** be extended for up to 72 months to cover **Wrongful Acts** occurring prior to the effective date of such merger, consolidation or acquisition. Such extension will be at the sole discretion of the **Insurer** and may be subject to additional and altered terms and conditions of this **Policy** including the charging of an additional premium, and:
 - (i) clauses 2.3 Discovery and 2.7 Retirement Run-off will not apply to any such extension;
 - (ii) cover shall lapse in the event that the **Company** effects a Directors and Officers policy cover broadly equivalent to this **Policy** in scope; and
 - (iii) cover shall not be provided to any **Director** who has been or is disqualified from holding the position of director.

3 Definitions

3.1 Asset and Liberty Proceeding

Proceedings brought against the **Director** by anybody (including the Financial Services Authority) other than the **Company**, so authorised for the purpose of examining the affairs of the **Company** or the conduct of the **Director** in their capacity as such, seeking:

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

3.2 Asset and Liberty Proceedings Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in dealing with an **Asset and Liberty Proceeding**, provided that such proceeding is commenced during the **Period of Insurance**.

3.3 Claim

A demand made for compensation or damages from, or an allegation of a right against, a **Director** which is communicated to the **Director**. All **Claims** related or connected in any way by reference to any common contributory factor or characteristic shall be treated as a single **Claim**, provided that all such **Claims** are notified during the **Period of Insurance** or the discovery period if applicable.

3.4 Company

The entity(ies) named in the **Schedule**, including any **Subsidiary**, but excluding any firm or company acting in their capacity as liquidator, external auditor, receiver or administrative receiver.

3.5 Criminal Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in defending any criminal investigations or proceedings commenced during the **Period of Insurance** and brought against them by any government body for any **Wrongful Act** including gross breach of duty of care that causes the death of another person and proceedings under the Bribery Act 2010. Or the equivalent in any other covered jurisdiction.

3.6 Defence Costs and Expenses

Legal costs and expenses incurred by or on behalf of the **Director** with the prior written and continuing consent of the **Insurer**. It does not include any **Director's** or the **Company's** own costs and expenses (including salaries) or any value attributable to the time spent by the **Director**, **Company** or any **Employee** in dealing with a **Claim**. **Defence Costs and Expenses** shall include premium paid for insurance instruments or for bonds which may be required.

3.7 Director

- (a) Any natural person who is, was, or becomes a director or officer of the **Company** during the **Period of Insurance** or holds any equivalent position in any jurisdiction;
- (b) Any natural person who is, was, or becomes an **Employee** of the **Company** during the **Period of Insurance**:
 - (i) acting at the specific prior written request of the **Company** in the capacity of **Outside Director**; or
 - (ii) acting in a managerial or supervisory capacity; or
 - (iii) named as co-defendant with any director or officer; or
- (c) any director or officer's lawful spouse or civil partner as defined in the Civil Partnership Act 2004 where in receipt of a **Claim** because of the **Wrongful Act** of the director or officer; or
- (d) the estate, heirs, legal representatives or assigns of any person within (a) or (b) above.

All references to directors and officers apply equally to non-executive and executive directors.

It does not include any person acting in their capacity as administrator, liquidator, external auditor, receiver or administrative receiver.

3.8 Employee and Employment

Any:

- (a) person under a contract of service or apprenticeship with the **Company**;
 - (b) person employed by labour only sub-contractors;
 - (c) self employed person;
 - (d) person hired to or borrowed by the **Company**; or
 - (e) person undertaking study or work experience, voluntary work or a youth training scheme ;
- whilst working for and under the control of the **Company** provided they are not acting as a **Director**.

3.9 Employment Practices Wrongful Act

Any actual or alleged:

- (a) discrimination with respect to the terms or conditions of **Employment** on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
- (b) harassment, including unwelcome sexual or non sexual advances, requests for sexual favours and any unwelcome verbal, visual or physical contact of a sexual nature which:
 - (i) is explicitly or implicitly made a term or condition of **Employment**;
 - (ii) creates a hostile or offensive working environment;
 - (iii) when rejected or opposed by a person becomes a basis for decisions regarding that person's **Employment**;
- (c) defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for **Employment**, professional reputation, disciplinary history or termination of **Employment**;
- (d) wrongful termination of **Employment** or refusal to hire;
- (e) adverse change in the terms and conditions of a person's **Employment** in retaliation for that person's exercise of his or her rights under law or support of the rights of another.

3.10 Excess

The first part of each and every amount payable by the **Insurer** under this **Policy** which shall be the responsibility of the **Company** to pay before the **Insurer** shall have any liability to indemnify under this **Policy**.

3.11 Extradition Notice

- (a) any request for the extradition of any **Director**, any warrant for the arrest of any **Director** or other proceedings under the provisions of the United Kingdom Extradition Act 2003;
 - (b) any associated appeal;
 - (c) the equivalent of the above in any other jurisdiction;
- arising from a **Wrongful Act**.

3.12 Extradition Proceedings Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in dealing with an **Extradition Notice**, provided the **Extradition Notice** is first served on the **Director** during the **Period of Insurance**.

3.13 Identity Theft Claim

A **Claim** made by a third party to enforce an agreement entered into with another person or entity fraudulently representing themselves as a director in connection with the **Company** business notified to the **Insurer** during the **Period of Insurance**.

3.14 Insurer

Catlin Insurance Company (UK) Ltd.

3.15 Investigation

A formal investigation, enquiry or request for information of or attendance by the **Director** initiated by a third party with a legal right other than the **Company** authorised so to compel the **Director** for the purpose of evaluating the conduct of the **Director**.

3.16 Investigation Costs and Expenses

Defence Costs and Expenses incurred in the context of an **Investigation** provided that such **Investigation** is first commenced during the **Period of Insurance**.

3.17 Loss

An award of compensatory damages made by a competent court or tribunal including third party costs or any settlement incurred with the prior written consent of the **Insurer**.

Loss does not include

- (a) **Director** or **Employee** remuneration, benefits, stock or share options or severance payments; or
- (b) taxes, fines or civil, regulatory or criminal penalties; or
- (c) punitive, aggravated or exemplary damages; or
- (d) in respect of any **Employment Practices Wrongful Act**:
 - (i) any salary or wages earned while in the **Employment** of the **Company**.
 - (ii) any **Employment** related benefits to which the claimant would have been entitled had the **Director** or the **Company** provided the claimant with a continuance, reinstatement or commencement of **Employment**.
 - (iii) contractual damages based upon the terms of a contract of **Employment**.
 - (iv) any liability or costs incurred to modify any building or property in order to make such a building or property more accessible or accommodating to any disabled persons.

3.18 Management Buy Out

A change of ownership of the **Company** whereby at least 50% of the issued share capital of the **Company** is transferred to the existing **Directors** and/or members of the **Company**.

3.19 Outside Director

A **Director** acting in the capacity of a director formally appointed on the written authority and request of the **Company** to the board or equivalent position in any organisation in which the **Company** holds a shareholding, any not-for-profit entity, any entity specified in the **Schedule** or any other entity which has been agreed to in writing by the **Insurer** other than:

- (a) the **Company**; or
- (b) any entity that:
 - (i) has its securities listed or traded on any exchange; or
 - (ii) possesses any tangible or intangible asset located within the USA and/or Canada.

3.20 Pension/Employee Benefit Scheme

A money purchase (defined contribution) pension or employee benefit scheme which is registered in the United Kingdom and governed by the laws of England and Wales.

3.21 Period of Insurance

The period shown in the **Schedule** during which time the **Policy** is in force.

3.22 Policy

This insurance contract.

3.23 Pollution

Any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including, but not limited to, material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.24 Pollution and Contamination Defence Costs and Expenses

Defence Costs and Expenses incurred by the **Director** in defending any proceedings brought against them during the **Period of Insurance** in relation to any **Wrongful Act** involving **Pollution**.

3.25 Proposal

The written proposal or proposals, whether or not using a special form or including a presentation document, made by or on behalf of the **Directors** or the **Company** for the insurance evidenced by this **Policy**, including any, statements of fact, declarations, warranties or information which the **Insurer** has relied on.

3.26 Public Relations Costs

Reasonable fees, costs and expenses of the public relations consultants incurred by a **Director** with the prior written consent of the **Insurer** to be given at their absolute discretion where they are satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **Director's** reputation from a **Claim** first made against the **Director** during the **Period of Insurance**.

3.27 Schedule

The schedule attaching to the **Policy**.

3.28 School, Charity or Charitable Organisation

- (a) a place or institution for teaching and learning; or
- (b) a body registered with the Charities Commission; or
- (c) a voluntary organisation which does not distribute its surplus funds to owners or shareholders, but instead uses them for the benefit of its members or charitable purposes;

in the United Kingdom.

3.29 Shareholders Derivative Costs

Reasonable fees, costs and expenses incurred by any shareholder of the **Company** in pursuing a **Claim** first made during the **Period of Insurance** against a **Director** for a **Wrongful Act** by way of a shareholder derivative action on behalf of the **Company** but only to the extent that the **Company** is legally liable to pay such fees, costs and expenses pursuant to an order of the Court.

3.30 Subsidiary

An entity in which the **Company** :

- (a) owned or owns directly or indirectly more than 50% of the voting rights or more than 50% of the share capital issued in such entity; or
- (b) had or has the right to appoint or remove the majority of such entity's board of directors; or
- (c) controlled or controls alone pursuant to a written agreement with other shareholders or members the majority of the voting rights in such entity, provided that the **Company** is also a shareholder in it;

but only in respect of **Wrongful Acts** committed in relation to the **Subsidiary** while a **Subsidiary** of the **Company**.

3.31 Total Gross Assets

The total gross assets of the **Company** and its **Subsidiaries** as shown in its audited consolidated group accounts most recently preceding the **Period of Insurance**.

3.32 Wrongful Act

An actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by a **Director** acting in his or her capacity as:

- (a) a director or officer of the **Company**; or
- (b) a director or administrator of a **Pension/Employee Benefit Scheme** of the **Company**.

4 Limit of Indemnity

- 4.1 Notwithstanding the Additional Limit (clause 2.1), the aggregate Limit of Indemnity set out in the **Schedule** is the maximum aggregate amount payable by the **Insurer** under clauses 1 (Operative Clauses) and 2 (Extensions) of this **Policy** (including in respect of any **Claims** notified during any discovery period) irrespective of the number of **Claims**.
- 4.2 The Limit of Indemnity applicable to the Operative Clauses and each Extension shall be as stated in the **Schedule**.
- 4.3 Any payment in respect of Operative Clauses 1 (a), (b), (c) or (d) and Extensions 2.2 to 2.8 inclusive shall erode the Limit of Indemnity. Once the Limit of Indemnity is completely eroded then, subject to the Additional Limit (clause 2.1) the **Insurer** shall have no further liability under this **Policy**.
- 4.4 The amount payable by the **Insurer** in respect of Operative Clauses 1(c) (iii), (vi), (viii), (ix) or Extensions 2.1, 2.4, 2.6 and 2.7 shall not exceed the sub-limits stated in the **Schedule**. These sub-limits are each aggregate limits and form part of the Limit of Indemnity. Once such sub-limit or the Limit of Indemnity is completely eroded then, subject to the applicability of any Additional Limit (clause 2.1) the **Insurer** shall have no further liability under this **Policy**.
- 4.5 If the Additional Limit (clause 2.1) applies then each and every further payment shall erode the aggregate sub-limit stated in the **Schedule** and once that has been completely eroded the **Insurer** shall have no further liability under this **Policy**.

5 Exclusions

The **Insurer** shall not have any liability under this **Policy** for, or directly or indirectly arising out of, or in any way connected with:-

5.1 Changes in or failure to provide Information

- (a) any **Claim** against a **Director**
- (i) arising from information contained in the **Proposal** that the **Director** knew, or ought reasonably to have known, had been misrepresented or which was required by the **Insurer** prior to inception of this **Policy** but which was not disclosed; or
 - (ii) arising from a material change to the information contained in the **Proposal** or in relation to the information required by the **Insurer** prior to inception of this **Policy** but which was not disclosed (unless such change has been agreed in writing by the **Insurer**) about which change the **Director** knew or ought reasonably to have known.
- (b) any **Claim** against the **Company** (to the extent that cover may be provided to the **Company** by this **Policy**)
- (i) arising from information contained in the **Proposal** that has been misrepresented or which was required by the **Insurer** prior to inception of this **Policy** but which was not disclosed; or
 - (ii) arising from a material change in circumstances from the information contained in the **Proposal** or in relation to the information required by the **Insurer** prior to inception of this **Policy** but which was not disclosed unless such change has been agreed in writing by the **Insurer**.

5.2 Death or Bodily Injury

Bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, except:

- (a) emotional distress, mental stress and mental anguish in respect of an **Employment Practices Wrongful Act**; or
- (b) in respect of **Criminal Defence Costs and Expenses** in any criminal proceedings or investigation under health and safety/manslaughter or corporate manslaughter legislation for gross breach of duty of care that causes the death of another person or the equivalent in any jurisdiction.

5.3 Dishonest, Fraudulent or Criminal Acts

Any dishonest, fraudulent or criminal act or omission or any wilful breach of any statute, rule or law by the **Director**.

This exclusion shall only apply to the **Director** that is actually guilty of the above conduct, as established through a final adjudication by any court, tribunal or other similar body, or admission by the **Director**.

5.4 Insolvency

Any **Director** or the **Company** filing a bankruptcy petition, winding up petition, making any arrangement with their creditors, deed of arrangement or going into liquidation within the first 180 days of the **Period of Insurance**. This Exclusion shall not apply if this **Policy** is linked by continuous renewal to this **Period of Insurance** with the **Insurer**.

5.5 Other Insurance

Any matter in respect of which the **Company** or **Director** is (or but for the existence of this **Policy** would be) entitled to cover under any other policy, except where such other insurance is written as specific excess insurance to provide an indemnity in excess of the amount payable under this **Policy**. This **Policy** shall only apply in excess of such other policy to the extent of such part of the Limit of Indemnity or any applicable sub-limit exceeds the limit of the other policy.

5.6 Other Pension and Employee Benefit Schemes

Any retirement, pension, profit-sharing, health, welfare or any other employee benefit fund, trust scheme or plan or related legislation or regulations anywhere in the world including but not limited to the US Employee Retirement Income Security Act 1974 and UK Pensions Act 1995 and/or subsequent amending or re-enacting legislation other than any **Pension and Employee Benefit Schemes**.

5.7 Pollution

Any **Pollution** and any regulatory, direction or request to test for, assess, monitor, remove, contain, treat, detoxify or neutralise any **Pollution**. However this exclusion shall not apply to:

- (a) **Pollution and Contamination Defence Costs and Expenses** in relation to any **Wrongful Act** concerning such matters.
- (b) a **Claim** against a **Director** for a **Wrongful Act** by way of a shareholder derivative action.

5.8 Prior Claims, Investigations or Circumstances

- (a) Any **Claims, investigations** or circumstances known to the **Company** or **Director**; or
 - (b) about which the **Company** or **Director** ought to have known;
- prior to the commencement of the **Period of Insurance**.

5.9 Professional Indemnity

Any **Claim** arising from or connected with the giving of professional advice or service whether or not for remuneration or any act, error or omission relating thereto.

This exclusion shall not apply to a **Claim** brought by any shareholder of the **Company** including any shareholder derivative action arising out of the actual or alleged failure to supervise the performance of the professional advice or service.

5.10 Profit or Advantage

Any unlawful personal profit, remuneration or advantage gained by the **Director** or a financial advantage to an entity in which the **Director** has a financial interest.

This exclusion shall only apply to a **Director** who has admitted such conduct has occurred or against whom there has been a final adjudication by a competent court or tribunal that such conduct has occurred.

5.11 Property Damage

Any damage to or destruction or loss of any property including loss of use.

5.12 Securities

Any purchase, exchange or sale or offer to purchase, exchange or sell, securities of any description by means of a prospectus or private placement on or after the commencement of the **Period of Insurance**.

Subject to the supply and review of all material information and documentation connected with any prospectus or private placement, the **Company** may request that the **Policy** be extended to provide such cover. However, such extension will be at the sole discretion of the **Insurer** and may be subject to additional and altered terms and conditions of this **Policy** including the charging of an additional premium.

5.13 Shareholder Exclusion (Wrongful Act)

Any **Claim** brought by or on behalf of, whether directly or derivatively, any individual or group of individuals or entity which owns or controls 30% or more of the issued and outstanding share capital of the **Company** provided that this exclusion shall only apply to **Claims** where such individual or entity or their representative has, directly or indirectly, participated in or ratified the alleged **Wrongful Act** being the subject of a **Claim**.

5.14 United States of America and/or Canada

Any **Claim**, allegation, proceeding or **Investigation** brought in the United States of America (USA) or Canada, including the enforcement outside the USA or Canada of any judgment, order, award or settlement made within the USA or Canada or which arises from or is connected, directly or indirectly, with:

- (a) any event, occurrence or activity of any sort within the USA or Canada;
- (b) the holding of or dealing in securities listed or traded on any US or Canadian Exchange or any other form of assets, tangible or intangible in the USA or Canada;
- (c) activity in the USA or Canada of any parent, **Subsidiary**, associated company, joint venture or special purpose vehicle or company whether or not registered in the USA or Canada.

6 Conditions

6.1 Advanced Payment of Costs

The **Insurer** shall pay **Defence Costs and Expenses** as they are incurred. However in the event and to the extent that it is finally determined that the **Company** or **Director** is not entitled to such payments under this **Policy** the sums advanced must be repaid to the **Insurer** upon demand.

6.2 Allocation

In the event of any **Loss** being partially covered and/or any **Claim** against a **Director** being also made against the **Company** and/or one or more persons who is not a **Director**, the **Insurer** shall use their best endeavours fairly and reasonably to agree such an allocation of **Loss** to the **Policy** as may be appropriate and proportional to the aggregate of insured loss and uninsured loss, damages and legal and other costs.

6.3 Avoidance by the Insurer

If the **Insurer** is entitled, for any reason, to avoid this **Policy** ab initio, the **Insurer** may in their absolute discretion elect instead to give notice to the **Company** or the **Director** that they regard this **Policy** as being in full force and effect, except that no cover will be given under this **Policy** in respect of any **Claim** that arises from or is related to the ground(s) that entitled the **Insurer** to avoid this **Policy**.

6.4 Changes in the Proposal Information

The **Insurer** must be given notice of any change in the information provided in the **Proposal** which becomes known to the **Company** or any **Director** during the **Period of Insurance**. Until the **Insurer** has been advised of such change and has agreed in writing to accept liability for such altered risk, the **Insurer** shall not be liable for any **Claim** arising wholly or partially from any such changed circumstances. Changes in information accepted by the **Insurer** will thereafter form part of the **Proposal**.

6.5 Claims Procedures

The **Insurer** will not make any payment under this **Policy** unless all of the following conditions have been complied with:

(a) Notification

The following must be notified as soon as practicable after they come to the attention of a **Director** or the person responsible for arranging insurance;

- any **Claim**; or
- any circumstance(s) of which the **Company** or **Director** become aware which is or are likely to give rise to a **Claim** or an entitlement to be indemnified under this **Policy**; or
- receipt of any claim form, particulars of **Claim**, arbitration notice or any other formal document commencing legal proceedings.

Notification must be made to the **Insurer** in writing at the Notification Address shown in the **Policy Schedule** during the **Period of Insurance** or within thirty days of the end of the **Period of Insurance** and should include copies of all relevant documents.

(b) No Admission of Liability

The **Company** or **Director** who claim for indemnity under this **Policy** shall not, without the prior written approval of the **Insurer**, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim** or any circumstance(s) likely to give rise to a **Claim** or any circumstance(s) where cover has been requested under this **Policy**.

(c) Duty to Co-operate

The **Company** and /or **Director** shall:

- (i)** provide prompt co-operation, information, documents, statements and assistance as the **Insurer** and its representatives, legal advisors or agents may reasonable require; and
- (ii)** ensure that all documents in both paper and electronic form relevant to any **Claim** or any circumstances likely to give rise to a **Claim** are retained and not be intentionally destroyed or disposed of.

6.6 Consent to Settle

The **Insurer** shall not settle any **Claim** without the written consent of the person or entity insured. If the person or entity insured refuses to consent to a settlement demand acceptable to the claimant and recommended by the **Insurer** and elects instead to contest the **Claim**, then the **Insurer's** total liability for such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus any **Defence Costs and Expenses** incurred as of the date such **Claim** could have been settled and to which this **Policy** would otherwise apply. In the event of a dispute between the **Insurer** and the person or entity insured in relation to whether a **Claim** should be settled the **Insurer** may obtain an opinion from Queen's Counsel or a person who holds an equivalent position in any other jurisdiction and such opinion shall be binding on the **Insurer** and the person or entity insured.

6.7 Fraudulent Claims

If any **Claim** under this **Policy** is shown in any respect to be fraudulent, this **Policy** shall become void ab initio and all benefit hereunder shall be forfeited.

6.8 Insurer Entitled to Defend

The **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance(s) likely to give rise to a **Claim** and any circumstance(s) where cover has been requested under this **Policy** including as to the choice and appointment of legal representation. If the **Insurer** takes over the conduct of a **Claim** then they shall be entitled to defend or settle the **Claim** at their absolute discretion.

6.9 Interpretation

In this **Policy**:

- (a)** reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the beginning of the **Period of Insurance**;
- (b)** if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c)** the headings are for general reference only and shall not be considered when determining the meaning of this **Policy**

6.10 Law and Dispute Jurisdiction

- (a)** This **Policy** shall be governed by and construed in accordance with the laws of England and Wales.
- (b)** Any dispute or difference arising under or in respect of this **Policy** shall be subject to the exclusive jurisdiction of the courts of England and Wales.

6.11 Misrepresentation and Non-Disclosure

This **Policy** is provided on the basis of the information received by the **Insurer** in the **Proposal**.

The person completing the **Proposal** must make proper enquiries ensuring that all the statements in the **Proposal** are accurate and that no information has been withheld or misrepresented.

6.12 Order of Payments

Where there are multiple **Claims** for indemnities under this **Policy**, the **Insurer** shall make payments in the order those **Claims** are presented to it.

If it becomes apparent to the **Insurer** in their absolute discretion that the Limit of Indemnity will not be sufficient to cover all expected payments under the **Policy** then the **Insurer** will make payments in the following order:

- (a) payments under the Operative Clause 1 (a) direct to the **Directors**; followed by
- (b) payments under the Operative Clause 1 (b), to the **Company**; followed by
- (c) any other payments to the **Company**.

6.13 Premium Payment

Unless the **Insurer** has agreed that the premium can be paid via Direct Debit instalments, the premium must be paid in full to the **Insurer** within 30 days of the beginning of the **Period of Insurance**. If the **Insurer** has not received the premium by the due date then they shall have the right to cancel this **Policy** by giving 15 days written notice. In the event of cancellation, the premium is due to the **Insurer** on a pro rata basis for the period of insurance that the **Insurer** is on risk; however the full annual Policy premium shall be payable to the **Insurer** in the event a **Claim** has been made on the **Policy** prior to the date of cancellation.

If the **Insurer** has agreed to collect the premium via Direct Debit instalments and they not received an instalment 15 days after the due date, then the **Insurer** shall have the right to cancel this **Policy** with immediate effect. In such circumstances the period of insurance will equate to the period for which the premium instalments have been received by the **Insurer**.

The **Insurer** will confirm the cancellation and amended period of insurance in writing via the **Insured's** address shown in the **Schedule**.

6.14 Proposal Operation

The **Proposal** shall operate severally in relation to each **Director** and no statement, information or knowledge on the part of any **Director** shall be imputed to any other **Director** for the purposes of determining whether cover is available to that other **Director**. This condition shall not apply to any **Claim** excluded under clause 5.1 (a).

6.15 Subrogation

In the event of any payment by the **Insurer** under this **Policy**, the **Insurer** shall be subrogated up to the amount of such payment to all the rights of recovery of the **Company** and/or **Director** or any person indemnified against any third party, provided always that they shall not exercise any such rights against any **Employee** or former **Employee** unless the **Loss** was caused or contributed to by a fraudulent, dishonest or malicious act or omission by said person.

The **Company** and/or **Director** and any person indemnified shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which they would become subrogated under this **Policy**. The **Company** and/or **Director** and any person indemnified agree that the **Insurer**, at their option, may have the conduct of any proceedings to recover monies paid or payable by them, whether or not the **Company** and/or **Director** or person indemnified has an interest in such proceedings by reason of any uninsured losses.