

# ForeFront

Policy Wording for Management Liability

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In consideration of payment of the premium and subject to the terms of this Policy, the **Insurer** and the **Policyholder** agree as follows:

## Section 1: General Section (“this General Section”)

### 1. Cover

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1.1 The **Insurer** will provide insurance cover as set out in the Insuring Clauses of those **Cover Sections** which are identified in Item 3 of the Schedule as operative.

### 2. Application of Terms

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2.1 Except where this General Conditions Section expressly states otherwise, it shall apply to all **Cover Sections** of this Policy, subject to the provisions of Clause 2.2 below. The terms of each other **Cover Section** of this Policy apply only to that **Cover Section** and shall not be construed to apply to any other **Cover Section**.

2.2 Where a provision in this General Conditions Section uses a word in bold which is defined in another **Cover Section**, the provision shall, as applied to that other section, be construed with the word in bold bearing the meaning given in that other section.

### 3. Definitions

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In this Policy the word ‘persons’, wherever it appears, means legal or natural person(s) unless otherwise specified. When used in bold type in this Policy:

3.1 **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.

An **Insured** reporting to a governmental, regulatory, law enforcement, professional or statutory body conduct which might give rise to a **Claim** or **Investigation** shall not constitute an **Admission**.

3.2 **Attendance Compensation** means, under **Cover Sections** 3, 4, 5 and 8, in respect of a director, officer or employee of a **Company**, compensation, up to a maximum aggregate sum for the Policy of EUR 50,000, regardless of the number of **Cover Sections** claimed under or number of **Insureds** who claim, as follows:

- (a) attending a court or arbitration hearing as a witness, EUR 250 for each day that person attends as a witness;
- (b) being interviewed by, and in the physical presence of, the lawyers conducting the defence of the **Claim** for the purpose of composing a witness statement, EUR 50 per hour in respect of the time certified by such lawyers as time being interviewed;
- (c) being reasonably needed to attend a consultation with a barrister, EUR 50 per hour in respect of the time certified by the lawyers conducting the defence of the **Claim** as time spent in such consultation; or
- (d) attending a court or arbitration hearing as the sole observer on behalf of the **Company**, EUR 250 for each day that person attends as observer.

3.3 **Company** means, for the purposes of all **Cover Sections** other than **Cover Section 4** (Benefit Plan Liability), a company which is the **Policyholder** or a **Subsidiary** including any such company in its capacity as a debtor in possession under USA bankruptcy law or in an equivalent status under the law of any other country. For the purposes of **Cover Section 6** (Employee Crime) only, **Company** includes an **Employee Benefit Plan**.

**Company** means, for the purposes of **Cover Section 4** (Benefit Plan Liability), an entity which is a **Benefit Plan, Employer** or **Corporate Trustee**.

- 3.4 **Cover Section** means any of (as may be specified) Section 2 (D&O Section), Section 3 (Corporate Legal Liability), Section 4 (Employment Practices Liability), Section 5 (Benefit Plan Liability), Section 6 (Employee Crime), Section 7 (Kidnap and Extortion Expenses), and Section 8 (Cyber Liability & Incident Response Expenses).
- 3.5 **Cover Sections** means all of Section 2 (D&O Section), Section 3 (Corporate Legal Liability), Section 4 (Employment Practices Liability), Section 5 (Benefit Plan Liability), Section 6 (Employee Crime), Section 7 (Kidnap and Extortion Expenses), and Section 8 (Cyber Liability & Incident Response Expenses).
- 3.6 **Final Adjudication** means (a) an **Admission**; or (b) a conviction, judgment, finding, award, or refusal of relief by a court, tribunal or arbitral panel of competent jurisdiction, but only (i) if not appealed against, when the time for appeal has expired; or (ii) if appealed against, when such appeal has been determined, abandoned or otherwise completed.

For the purposes of Section 3 (Corporate Legal Liability), Exclusions 4.9 and 4.12, **Final Adjudication** means:

- (a) an **Admission**; or
  - (b) a judgment, finding, award, or refusal of relief by a court, tribunal, approved mediator by the Centre for Effective Dispute Resolution (or equivalent organization) or arbitral panel of competent jurisdiction, but only:
    - (i) if not appealed against, when the time for appeal has expired; or
    - (ii) if appealed against, when such appeal has been determined, abandoned or otherwise completed.
- 3.7 **Foreign Jurisdiction** means any jurisdiction other than the jurisdiction in which this Policy was issued.
- 3.8 **Insurer** means Chubb European Group SE .
- 3.9 **Insured** means a **Company** or an **Insured Person**.
- 3.10 **Policyholder** means the entity stated in Item 1 of the Schedule.
- 3.11 **Policy Period** means the period of time stated in Item 2 of the Schedule but subject to prior termination when cover terminates in accordance with Clause 6 below. If this period is less than or greater than one year, then each limit of liability stated in Item 3 of the Schedule, together with any applicable additional limit of liability stated in Item 4.1 or 4.2 of the Schedule, shall in combination, constitute the **Insurer's** maximum liability for the entire period under the **Cover Section** to which that limit of liability relates.
- 3.12 **Pollutant** means contaminant, irritant, or other matter or substance, including but not limited to oil, vapour, soot, spores, asbestos, asbestos containing materials, fumes, acids, alkalis, nuclear or radioactive material, greenhouse gas, chemicals and waste (including materials to be recycled, reconditioned or reclaimed), whether in a solid, liquid or gas, odour, noise, vibration, electromagnetic radiation, ionising radiation, thermal or other form at any time.
- 3.13 **Pollution** means:
- (a) the actual, alleged, or threatened exposure to, discharge, treatment, transportation, removal, disposal, dispersal, seepage, migration, release, or escape of any **Pollutant**; 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.
- 3.14 **Presentation** means the answers to the **Insurer's** questions submitted by the **Policyholder** or any other **Insured** in applying for this **Policy**.
- 3.15 **Property Damage** means damage or impairment to, or destruction or loss of use of, any property.
- 3.16 **Subsidiary** means an entity 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.

In the case of a joint venture or similar entity, **Subsidiary** means an entity in which the **Policyholder** directly and/or indirectly exercises effective management control.

However, where there is a reference to a **Subsidiary** or **Subsidiaries** of a **Company** other than the **Policyholder**, **Subsidiary** shall for the purposes of that reference have the above meaning, but as if the words “the **Policyholder**” were replaced by “a **Company**”.

### 3.17 **Transaction** means

- (a) the **Policyholder** merges into or consolidates into another entity;
- (b) the **Policyholder** sells all or more than 90% of its assets to any person or entity or persons or entities acting in concert;
- (c) any person or entity or persons or entities acting in concert acquire or secure more than 50% of the issued share capital of the **Policyholder**;
- (d) any person or entity or persons or entities acting in concert acquire control of the appointment of the majority of the board of directors of the **Policyholder**; or
- (e) any public listing of the **Company’s** securities on any exchange.

For the purposes of **Cover Section 8** (Cyber Liability & Incident Response Expenses) only, **Transaction** also means the **Policyholder** completely ceasing the primary business it was carrying on at the start of the **Policy Period**, or the **Policyholder** entering into bankruptcy, winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or a receiver or holder of a similar position is appointed over any of its assets.

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

## 4. Spouses, Partners and Estates

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- 4.1 The definition of **Insured Person** in each **Cover Section** is, solely for the **Wrongful Act** of a natural person described in such definition in their **Insured Capacity**, extended to include such natural person’s:
- (a) lawful spouse, civil partner (as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) 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.

## 5. Subsidiaries

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- 5.1 Should an entity cease to be a **Subsidiary** before or during the **Policy Period**, there shall nonetheless be cover under this Policy with respect to such **Subsidiary** and its **Insured Persons**.

With respect to a **Subsidiary** and its **Insured Persons**, cover under this Policy shall apply only for:

- (a) **Wrongful Acts**;
- (b) (as concerns **Investigations, Corporate Manslaughter Investigations** and **Health & Safety Investigations**) conduct;
- (c) **Crimes** occurring; or
- (d) **Kidnappings, Hijackings, Wrongful Detentions, Extortions, Cyber Extortions** and **Political Threats** commencing,

while such entity was a **Subsidiary**. The **Insurer** may agree to provide cover for prior matters, following receipt of further information and subject to additional terms, conditions and premium as the **Insurer** may require.

## 6. Acquisition of the Policyholder; Change of Status

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- 6.1 If, during the **Policy Period**, a **Transaction** occurs, the **Policyholder** shall give written notice to the **Insurer** within 30 days of the effective date.
- 6.2 Cover for the **Companies** and their **Insured Persons** under **Cover Sections 2, 3, 4, 5, 6** and **8** of this Policy shall continue until the end of the **Policy Period**, but only for **Wrongful Acts**, conduct (as applicable), or **Crimes** occurring before the effective date of such **Transaction**.

## 7. Limits of Liability and Retentions

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7.1 The limits and sub-limits of liability and Retentions shown in the Schedule of this Policy are separate limits, sub-limits and Retentions pertaining to each **Cover Section**. No payment by the **Insurer** under one **Cover Section** shall reduce or otherwise impair the **Insurer's** liability under any other **Cover Section**. The application of a retention under one **Cover Section** shall not reduce the Retention under any other **Cover Section**.

## 8. Notification of Claims (for Cover Sections 2, 3, 4 and 5 only)

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8.1 For all claims made under these **Cover Sections**, the **Insured** shall give written notice to the **Insurer** as soon as practicable, but this shall not be a condition precedent to the liability of the **Insurer**.

8.2 In the event of expiry of the **Policy Period**:

- (i) notice shall be given no later than 90 days after the expiry of the **Policy Period**;
- (ii) in relation to a **Claim** first made during a **Discovery Period**, notice shall be given no later than 30 days after expiry of such **Discovery Period**; or
- (iii) in relation to the unlimited extended reporting period for **Retired Insured Persons** in the D&O Section, notice shall be given no later than 30 days after a **Retired Insured Person** first becomes aware of a **Claim** or **Investigation**.

8.3 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**.

8.4 In respect of the costs and expenses of replacing or restoring **Documents**, each **Insured** shall give the **Insurer** written notice as soon as practicable of the **Documents'** loss, damage or destruction and give to the **Insurer** such information and co-operation as the **Insurer** may reasonably require.

8.5 In respect of **Cover Sections** 2, 3 and 5 only, if, during the **Policy Period** or a **Discovery Period** an **Insured** becomes aware of circumstances which might give rise to a **Claim** or **Investigation** and gives written notice of such circumstances to the **Insurer**, then any **Claim** or **Investigation** subsequently arising from such circumstances shall be treated as a **Claim** made or **Investigation** first commenced during the **Policy Period**.

8.6 In respect of **Cover Section** 4, if, during the **Policy Period**:

- (a) any natural person who is a director, officer or member of any **Company's** legal department, risk department or human resources department becomes aware of a **Potential Claim**; and
- (b) an **Insured** gives written notice of that **Potential Claim** to the **Insurer** (and provided such notice includes a description of the **Potential Claim**, the nature of the alleged **Wrongful Act**, the names of the potential claimants, the consequences and damages which have resulted or may result from the **Potential Claim** and the manner in which the human resources department or other comparable department first became aware of the **Potential Claim**) and requests cover under this Policy for any **Claims** subsequently resulting from that **Potential Claim**, then any such subsequently resulting **Claims** shall be deemed to have been first made during the **Policy Period**.

## 9. Reporting and Proof of Loss (for Cover Section 6 – Employee Crime)

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9.1 The **Policyholder** shall:

- (a) give the **Insurer** written notice of that **Crime** as soon as practicable after it is first **Discovered** and in any event no later than 90 days after it is first **Discovered**; and
- (b) provide, within 6 months after such **Crime** is first **Discovered**, a proof of loss, with full particulars, to the **Insurer**.

9.2 Each **Company** shall give to the **Insurer** all such information and co-operation as the **Insurer** may reasonably require, including but not limited to submitting to examination under oath at the **Insurer's** request and producing all pertinent records to the fullest extent legally permissible at such times and places as the **Insurer** shall reasonably require.

9.3 The **Policyholder** may offer a comparison between a **Company's** inventory records and an actual physical count of its inventory to prove the amount of **Financial Loss**, but only where the **Policyholder** establishes wholly apart from such comparison that the **Company** has sustained **Financial Loss**.

## 10. Reporting and Proof of Loss (for Cover Section 7 – Kidnap and Extortion Expenses)

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10.1 The **Insurer** shall be given:

- (a) written notice of the **Insured Event** which gives rise to the **Expenses**, as soon as practicable and in any event no later than 60 days following commencement of that **Insured Event**;
- (b) written notice of the incurring of the **Expenses**, as soon as practicable and in any event no later than 60 days following that incurring of **Expenses**; and
- (c) all such information and co-operation as the **Insurer** may reasonably require, including but not limited to submitting to examination under oath at the **Insurer's** request and producing all pertinent records to the fullest extent legally permissible at such times and places as the **Insurer** shall reasonably require.

## 11. Reporting of Claims and Circumstances (for Cover Section 8 – Cyber Liability & Incident Response Expenses)

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11.1 The **Insured** shall give written notice to the **Insurer** as soon as practicable of a **Claim** and in no event more than 60 days after the earlier of the following dates:

- (a) the date on which any of the **Company's** Chairman, Chief Executive, Managing Director, Finance Director, General Counsel, Risk Manager, Insurance Representative, Information Technology Manager, Chief Information Security Officer, or Information Security Officer first becomes aware that a **Claim** has been made; and
- (b) if this Cyber Section is not renewed, the expiry of the **Policy Period** or extended reporting period (if applicable).

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

11.3 If, during the **Policy Period** or an obtained 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** for a **Wrongful Act** occurring before the expiry of the **Policy Period** and gives written notice of such request and of such **Wrongful Act** to the **Insurer**,

then any **Claims** subsequently arising from such circumstances or such request shall be deemed to have first been made during the **Policy Period**.

## 12. Notices

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12.1 Written notices to the **Insurer** required by Clauses 8–11 above shall be sent by email to [irlclaims@chubb.com](mailto:irlclaims@chubb.com) or by post to the Claims Department at the **Insurer's** postal address at 5 George's Dock, IFSC, Dublin 2.

## 13. Territory

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13.1 Subject to all other terms of this Policy and unless law or regulation of any jurisdiction prevents the **Insurer** from paying:

- (a) **Cover Sections** 2, 3, 4, 5 and 8 shall cover **Loss** on account of **Claims** or **Investigations** in any jurisdiction;
- (b) cover under **Cover Section** 6 shall extend to **Loss** on account of **Crimes** occurring anywhere;
- (c) cover under **Cover Section** 7 shall extend to **Expenses** on account of an **Insured Event** occurring anywhere; and
- (d) cover under **Cover Section** 8 shall extend to **Loss** on account of **Wrongful Acts** occurring anywhere.

## 14. Valuation and Foreign Currency (for Cover Sections 2, 3, 4, 5 and 8)

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14.1 **Loss** under **Cover Sections** 2, 3, 4, 5 or 8 and which is not in the currency stated in Item 3 of the Schedule or any Endorsements of this Policy shall be converted to and paid in the currency of this Policy based upon the rate of exchange

published in The Financial Times on the date the final judgment is reached, the amount of the settlement is agreed upon or **Defence Costs** paid or any other element of **Loss** or **Event Loss** is due, respectively.

## 15. Subrogation

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- 15.1 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 shall not do anything to prejudice the **Insurer's** ability to assert such rights.
- 15.2 The **Insurer** shall not exercise any rights of subrogation against an **Insured** except against an **Insured Person** who has been subject to a **Final Adjudication** of deliberate dishonesty or fraud.

## 16. Authorisation Clause

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- 16.1 The **Policyholder** 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 an extended reporting period), and the **Insureds** agree that the **Policyholder** shall so act on their behalf.
- 16.2 The **Policyholder** or other **Company** shall not act on behalf of an **Insured Person**, and the **Insurer** shall have no obligation to communicate with them, in relation to a **Claim** or **Investigation** insofar as, and to the extent that, the **Policyholder** or other **Company** has a material conflict of interest with such **Insured Person**.

## 17. Alteration and Assignment

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- 17.1 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**.

## 18. Rights of Action

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- 18.1 No person other than an **Insured** shall have any rights under or in connection with this Policy, whether by virtue of the UK Contracts (Rights of Third Parties) Act 1999 or otherwise. 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.

## 19. Termination

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- 19.1 The **Policyholder** can cancel this insurance at any time by writing to the **Policyholder's** insurance broker.

The **Insurer** can cancel this insurance by giving the **Policyholder** thirty (30) days' notice in writing. The **Insurer** will only do this for a valid reason (examples of valid reasons are as follows):

- non-payment of premium;
- a change in risk occurring which means that the **Insurer** can no longer provide the **Policyholder** with insurance cover; or
- non-cooperation or failure to supply any information or documentation the **Insurer** requests.

- 19.2 This insurance has a cooling off period of fourteen (14) working days from either:
- the date the **Policyholder** is informed that the contract has been concluded; or
  - the start of the **Policy Period**,

whichever is the later.

If this insurance is cancelled then, provided an **Insured** has not made a **Claim**, the **Policyholder** will be entitled to a refund of any premium paid, subject to a deduction for any time during which the **Policyholder** was covered. This will be calculated on a proportional basis.

For example, if an **Insured** were covered for six (6) months, the deduction for the time covered will be half the annual premium.

If the **Policyholder** cancels this insurance outside the cooling off period, there will be an additional charge to cover the administrative cost of providing the insurance.

If the **Insurer** pays any **Claim**, in whole or in part, then no refund of premium will be allowed.

## 20. Choice of Law and Jurisdiction and Interpretation

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20.1 This Policy, including all **Cover Sections**, is governed by Irish law.

20.2 Except as may be expressly provided in a **Cover Section**, any dispute or difference concerning this Policy shall be subject to and determined within the exclusive jurisdiction of the courts of the Republic of Ireland.

Unless expressly provided otherwise in a **Cover Section**, any reference in this Policy to:

- (a) the singular shall include the plural and vice versa;
- (b) the masculine shall include the feminine and vice versa;
- (c) a position, title, legal status, legal concept, Company or statute shall include the equivalent in any other jurisdiction; or
- (d) a statute or statutory provision shall include any amended version or re-enactment.

Policy headings and titles are for reference only and have no interpretational value.

Each **Cover Section** shall be interpreted solely according to its own provisions in conjunction with this General Section, and not by reference to the provisions of any other **Cover Section**.

## 21. Sanctions

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21.1 The **Insurer** shall not be deemed to provide cover and the **Insurer** shall not be liable to pay any sum or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer**, or its parent to any sanction, prohibition or restriction implemented pursuant to the United Nations or the trade and economic sanctions of the European Union, United Kingdom, or United States of America.

## 22. Difference in Conditions

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22.1 If a matter is notified during the **Policy Period**, the **Policyholder** may elect to have such matter adjusted according to the terms of the Elite SME policy, Chubb Forefront policy or Chubb Directors & Officers policy immediately preceding this Policy, within 30 days of receipt of a letter from the **Insurer** evaluating coverage for such matter notified under this Policy.

Notwithstanding the above:

- (a) the applicable limit of liability or sub-limits under this Policy shall apply irrespective of which policy's terms are applied;
- (b) the applicable retention under this Policy shall apply irrespective of which policy's terms are applied; and
- (c) this section shall not apply to the extent that any endorsement to this Policy excludes, directly or indirectly, the notified matter.

## Section 2: Directors and Officers liability (“this D&O Section”)

### 1. Insuring Clauses

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#### Directors and Officers Liability

- 1.1 The **Insurer** shall pay, on behalf of each **Insured Person**, **Loss** to the extent they have not been indemnified for that **Loss**.

#### Company Indemnification

- 1.2 The **Insurer** shall pay, on behalf of each **Company**, **Loss** to the extent that it has indemnified an **Insured Person** for that **Loss**.

#### Non-indemnified Investigation Costs

- 1.3 The **Insurer** shall pay, on behalf of each **Insured Person**, **Investigation Costs** to the extent they have not been indemnified for those **Investigation Costs**.

#### Indemnified Investigation Costs

- 1.4 The **Insurer** shall pay, on behalf of each **Company**, **Investigation Costs** to the extent that it has indemnified an **Insured Person** for those **Investigation Costs**.

#### Subpoenas

- 1.5 The **Insurer** shall pay, on behalf of each **Insured Person**, **Subpoena Costs**.

### 2. Extensions

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#### Limit of Liability Each Single Claim

- 2.1 A separate **Limit of Liability** shall apply in respect of all **Loss** arising from each **Single Claim**, subject to the conditions of this D&O Section.

#### Additional Excess Limit for Defence Costs

- 2.2 The payment by the **Insurer** of **Defence Costs** shall erode the **Limit of Liability** only after exhaustion of the Additional Excess Limit for **Defence Costs** stated in Item 4.1 of the Schedule. This Extension shall only apply to the first **Single Claim** notified in accordance with General Section Clause 8.

#### Additional Excess Limit for Non-Indemnifiable Loss

- 2.3 The **Insurer** shall, in the event **Loss** paid by the **Insurer** under this D&O Section reaches the amount of the **Limit of Liability**, pay **Loss** that is not **Indemnifiable** of each of the directors of the **Policyholder** or non-executive directors of any **Subsidiary**, on account of **Claims** made within the **Policy Period**, up to the Additional Excess Limit stated in Item 4.2 of the Schedule.

#### Acquisition or Creation of Another Company

- 2.4 If, during the **Policy Period**, a **Company**:
- (a) acquires securities or voting rights in another entity which as a result of such acquisition becomes a **Subsidiary**;
  - (b) creates an entity which as a result of such creation becomes a **Subsidiary**; or
  - (c) acquires any entity by merger into or consolidation with that **Company**,

then the individuals set out in the **Insured Persons** Definition 3.14 of that entity shall automatically become **Insured Persons** under this D&O Section with effect from the date of such acquisition or creation but only with respect to **Wrongful Acts** or conduct after, such acquisition or creation.

This is provided, in the event of an acquisition described in (a) or (c) immediately above, such entity:

- (i) has total assets of no more than the Acquisition Limit in Item 4.15 of the Schedule; and
- (ii) has no listing of its securities in the **USA**. For the purposes of this Extension, listing of equity pursuant to Rule 144A of the **USA** Securities Act 1933 shall not constitute a public listing of Securities traded on an exchange in the **USA**.

Any newly acquired **Subsidiary** during the **Policy Period** that, by virtue of the requirement in (i) immediately above, is outside the scope of (a) or (c) above, shall be covered under this D&O Section for a period of 60 days from the date of acquisition. With the written agreement of the **Insurer** and subject to any additional premium and amended terms and conditions, this D&O Section may be extended to include such **Subsidiary** beyond 60 days, but only in respect of **Wrongful Acts** or conduct after such entity becomes 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 and subject to any additional premium and amended terms and conditions.

## Emergency Costs

- 2.5 If it is not possible for the **Insured Person** to obtain the **Insurer's** prior written consent to the incurring of **Defence Costs, Investigation Costs, Bail Bond Costs, Public Relations Expenses, Crisis Costs** or **Pre-Investigation Costs**, the **Insurer** will waive the requirement for prior written consent, as long as the **Insurer's** consent is sought within thirty days of the first of such costs being incurred.

## Extended Reporting Period, Retired Directors or Officers, and Takeovers/Mergers

- 2.6 (a) Should the **Insurer**, other than for non-payment of premium, or the **Policyholder**, not renew this D&O Section and it is not replaced by an equivalent directors' and officers' liability insurance policy:
- (i) the **Insured Person** may purchase the **Discovery Period**, provided that written notice of such election and payment of the additional premium are received by the **Insurer** within 60 days following the expiry of the **Policy Period**;
  - (ii) the **Retired Insured Persons** shall be automatically entitled to an unlimited extended reporting period; and
  - (iii) if no election is made under (i) above, the **Insured Person** shall be automatically entitled to an extended reporting period of 60 days.
- (b) This Extension shall apply only to:
- (i) a **Claim** first made during the **Discovery Period** or in the case of a **Retired Insured Person** after expiry of the **Policy Period**, but only in respect of their **Wrongful Acts** prior to expiry of the **Policy Period**; or
  - (ii) an **Investigation** first commenced during the **Discovery Period** or in the case of a **Retired Insured Person** after expiry of the **Policy Period**, but only in respect of their conduct prior to expiry of the **Policy Period**.
- (c) The provisions of this Extension above shall also apply only where no **Transaction** has taken place. If during the **Policy Period**, a **Transaction** takes place, the **Insured Person** may obtain an extended reporting period of 120 months from the expiry date of the **Policy Period** subject to additional terms, conditions and premium as the **Insurer** may require.
- (d) Where, following the expiry of the **Policy Period**, an equivalent directors and officers liability insurance policy is obtained by or for the benefit of an **Insured Person**, any cover provided by this Extension shall automatically be cancelled, with any premium paid fully earned at its inception.

## Outside Directorship

- 2.7 Cover under this D&O Section is extended to cover **Loss** arising out of an **Outside Directorship**, provided however that:
- (a) the **Insurer's** liability shall apply only to that part of the **Loss** which is excess of:
    - (i) any payment made under another valid and collectable insurance policy;

- (ii) the amount of the **Loss** for which the **Insured Person** serving in such **Outside Directorship** is indemnified by the **Outside Entity**; and
  - (iii) any applicable Retention for this D&O Section stated in Item 4.13 of the Schedule; and
- (b) in the event the **Outside Entity**'s directors' and officers' liability insurance is provided by the **Insurer** or any member of the Chubb group of companies, payment under such other policy in respect of the **Loss** shall reduce, by the amount of that payment, the **Insurer**'s liability under this D&O Section with respect to such **Loss**.

### **Management Buy-Outs**

- 2.8 In the event of an entity ceasing to be a **Subsidiary** as a result of a buy-out by existing management during the **Policy Period** the **Insurer** shall maintain this D&O Section in respect of such entity for a period of 30 days from the date of the buy-out for **Wrongful Acts** or conduct subsequent to such buyout. This Extension shall not apply where there is other insurance in place in respect of such **Wrongful Acts** or conduct.

### **Tax in Insolvency**

- 2.9 A **Wrongful Act** under this D&O Section is extended to include an **Insured Person**'s personal liability under applicable insolvency legislation for the **Company**'s unpaid taxes solely by reason of their **Insured Capacity** without any allegation of wrongdoing, where the **Policyholder** has become insolvent, and except to the extent such liability arises from a breach of any statutory duty governing payment of taxes by the **Policyholder** at the deliberate instigation or in the full knowledge and assistance of such **Insured Person**. The sub-limit under this Extension is stated in Item 4.12 of the Schedule.

### **Bail Bond Costs, Crisis Costs, Public Relations Expenses, Reputation Protection Expenses & Relative Costs**

- 2.10 This D&O Section covers, as **Loss**:
- (a) **Bail Bond Costs**;
  - (b) **Crisis Costs**;
  - (c) **Public Relations Expenses**;
  - (d) **Reputation Protection Expenses**; or
  - (e) **Relative Costs**.

### **Extradition Proceedings**

- 2.11 This D&O Section covers as **Loss**:
- (a) **Defence Costs**;
  - (b) **Bail Bond Costs**;
  - (c) **Crisis Costs**;
  - (d) **Public Relations Expenses**;
  - (e) **Reputation protection Expenses**; or
  - (f) **Relative Costs**;
- in relation to an **Extradition Proceeding**.

### **Prosecution Costs**

- 2.12 This D&O Section covers, as **Loss**, **Prosecution Costs** arising from a **Claim** or **Investigation**.

### **Civil Fines and Penalties**

- 2.13 This D&O Section covers, as **Loss**, **Civil Fines and Penalties** imposed by law as a result of a **Claim** or **Investigation**.

## Occupational Health & Safety

2.14 Notwithstanding Exclusion 4.3 this D&O Section covers, as **Loss**, all **Defence Costs** and **Investigation Costs** incurred by an **Insured Person** in their **Insured Capacity** arising from any **Claim** or **Investigation** in respect of the death or injury of a natural person.

## Deprivation of Assets Expenses

2.15 This D&O Section covers, as **Loss, Deprivation of Assets Expenses** arising from a **Claim** or **Investigation**. The sub-limit of liability under this Extension shall be EUR100,000 per **Insured Person**, and the **Insurer's** maximum aggregate liability under this Extension shall be EUR300,000 irrespective of the number of claims under this D&O Section, the amount claimed, the number of **Insured Persons** who claim, or when during the **Policy Period** such claims are made.

## Pre-Investigation Costs

2.16 This D&O Section covers, as **Loss**, the reasonable and necessary fees, costs, and expenses of an **Insured Person** (but not including any remuneration, cost of their time, or overheads of any **Company**) incurred directly with respect to:

- (a) any **Pre-Investigation**; or
- (b) preparing any written notice or reports to any governmental, regulatory, law enforcement, professional or statutory body in connection with any **Pre-Investigation**.

## Interpretive Counsel

2.17 **Defence Costs** are extended to include the reasonable costs and expenses, incurred by **Insured Persons**, of lawyers within their home jurisdiction solely to interpret and apply advice received from lawyers retained by such **Insured Persons** to defend a covered **Claim** in a **Foreign Jurisdiction**.

## Mitigation Loss

2.18 This D&O Section is extended to cover, as **Loss**, the **Mitigation Loss** of an **Insured Person**, for which cover would be granted under Insuring Clauses 1.1 or 1.2 in the event of a **Claim**, provided that:

- (a) the **Insured Person** demonstrates, to the reasonable satisfaction of the **Insurer**, that the incurring of such **Mitigation Loss** is reasonable and proportionate, and is reasonably likely to prevent or mitigate the potential **Claim**;
- (b) the circumstances giving rise to the need for payment of such **Mitigation Loss** are reported in accordance with General Section Clause 8;
- (c) any action taken is with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed);
- (d) the liability of the **Insurer** shall in no event exceed the amount of covered **Loss** it would have paid if a **Claim** were made against the **Insured Person**; and
- (e) the burden of proving that a **Claim** would be covered under this D&O Section shall rest with the **Insured Person**.

This Extension shall not apply to any potential **Claim** against an **Insured Person** by the **Company**, and shall be subject to the sub-limit stated in Item 4.10 of the Schedule.

## Reinstatement of Limit where a Recovery

2.19 The amount the **Limit of Liability** has been depleted following payment of **Loss** shall be reinstated to the extent of an amount equal to any sums recovered by the **Insurer** (net of the **Insurer's** reasonable costs associated with such recovery).

## Legal Help Line

2.20 The **Policyholder** may, during the **Policy Period**, obtain 42 minutes of free consultation, in respect of each separate matter relating to directors' and officers' liability, via a hotline administered by the law firm Gateley Plc.

The **Policyholder** may consult beyond expiry of the 42 minutes, but will be charged for the additional time. Further details of the service can be found on [www.chubb.com/ie/gateley](http://www.chubb.com/ie/gateley)

Gateley Plc is not the **Insurer's** agent for the giving or receiving of notices under this D&O Section and this Extension does not affect the **Insured Person's** reporting obligations set out elsewhere in the General Section Conditions.

The **Insured Persons** accept that the **Insurer** shall have no responsibility for, or liability arising out of, advice or services provided by Gateley Plc.

### 3. Definitions

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When used in bold type in this D&O Section:

3.1 **Bail Bond Costs** means the reasonable premium (not including any collateral) for a bail bond, or any other financial instrument to guarantee an **Insured Person's** observance of bail conditions, required by a court in respect of a **Claim**. The sub-limit is the amount specified in Item 4.4 of the Schedule.

3.2 **Civil Fines and Penalties** means fines and penalties (including, but not limited to, those imposed upon an **Insured Person** pursuant to 15 U.S.C. §78 dd-2 (g) (2) (B) of the **USA Foreign Corrupt Practices Act of 1977**) and which are:

- (a) non-criminal; and
- (b) permissible to insure and insurable under applicable laws.

3.3 **Claim** means the following, first commenced during the **Policy Period**:

- (a) a written demand;
  - (b) a civil, statutory, or arbitral proceeding, including any appeal and counterclaim;
  - (c) a criminal proceeding;
  - (d) a formal administrative or formal regulatory proceeding;
  - (e) a mediation proceeding; or
  - (f) a monetary, non-monetary injunctive or equitable relief or other legal remedy;
- against an **Insured Person**, for a **Wrongful Act**.
- (g) an **Extradition Proceeding**;
  - (h) a formal application to a court to prevent another proceeding defined in this Definition 3.3 from being commenced; and
  - (i) a written request to waive or toll a statutory limitation period or a contractual time bar in respect of another proceeding defined in this Definition 3.3.

Solely where referred to in the Exclusions and Conditions, unless expressly provided otherwise, **Claim** also means an **Investigation** and a **Subpoena**.

3.4 **Crisis Costs** means any reasonable professional fees, costs or expenses of any accredited:

- (i) counsellor; or
- (ii) tax adviser

retained by an **Insured Person** with the **Insurer's** prior consent (not to be unreasonably withheld or delayed), in respect of any **Claim**. The sub-limit of liability for **Crisis Costs** is specified in Item 4.11 of the Schedule.

3.5 **Defence Costs** means reasonable and necessary costs, expenses, charges and fees incurred by or on behalf of an **Insured Person** with the **Insurer's** prior written consent (which shall not be unreasonably delayed or withheld) in direct response to a **Claim**, other than remuneration or the cost of time of an **Insured Person** and internal corporate overheads.

3.6 **Deprivation of Assets Expenses** means the payment of the following services in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of any assets of an **Insured Person** or creating a charge over any asset of an **Insured Person**:

- (i) schooling;
- (ii) housing;
- (iii) utilities; or
- (iv) personal insurances.

Such expenses will only be payable after the exhaustion of any personal allowance directed by the court, and from 30 days after the procedure described in this Definition for a period of up to 12 months.

- 3.7 **Discovery Period** means the period in Item 12 of the Schedule.
- 3.8 **Employment Proceeding** means a proceeding brought by an **Insured Person** or past, present or prospective employee of a **Company** or of an **Outside Entity**, or brought by any government authority regulating employment practice, for an **Employment Wrongful Act**.
- 3.9 **Employment Wrongful Act** means any actual or alleged violation of employment laws, employment rights, or any legal provisions relating to an individual's actual or prospective employment relationship with a **Company**.
- 3.10 **Extradition Proceeding** means:
- (a) a request for extradition, a warrant for arrest or other proceeding under the provisions of any bilateral agreement on extradition between the Republic of Ireland and any other country; or the Extradition Act 1965, the European Arrest Warrant Act 2003, or any other Irish legislation in relation to extradition; or
  - (b) any associated appeals, including but not limited to, to the European Court of Human Rights and the pursuit of judicial review proceedings against the decision of the Minister for Justice and Equality or other appropriately authorised representative of the Republic of Ireland Government to issue an extradition certificate under any Irish legislation relating to extradition or equivalent in any other jurisdiction
- 3.11 **Foreign Policy** means the standard company directors' and officers' liability insurance policy of the **Insurer** or any other member of the Chubb group of companies normally available in a **Foreign Jurisdiction** at the time when this D&O Section was issued. If more than one such policy exists, then **Foreign Policy** means the standard company directors' and officers' liability insurance policy most recently filed by the **Insurer** or other member of the Chubb group of companies in the **Foreign Jurisdiction**.
- 3.12 **Indemnifiable** means an **Insured Person** is not prevented:
- (a) by law or insolvency; or
  - (b) by a **Company's** constitution, memorandum or articles of association, bylaws, shareholder resolutions, or board or other governing body resolutions,
- from being indemnified or reimbursed by a **Company**.
- 3.13 **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 a **Company**;
  - (b) with regard to an **Insured Person** as defined in (b) of the definition of **Insured Person**, the capacity of **Shadow Director**.
- 3.14 **Insured Person** means a natural person who has been, now is or becomes during the **Policy Period**:
- (a) a director or officer of a **Company**;
  - (b) a **Shadow Director**; or
  - (c) an employee of a **Company**, but only:
    - (i) with respect to an **Employment Proceeding**;
    - (ii) to the extent that such employee is acting in any managerial or supervisory capacity or **Outside Directorship**;
    - (iii) with respect to any **Claim** in which such employee is named as a co-defendant with a director or officer of a **Company**;
    - (iv) to the extent that such employee is acting as an approved person of a **Company** and is performing a controlled function as specified under Schedule 2 of the Republic of Ireland Central Bank Reform Act 2010 (Section 20 and 22) Regulations 2011;
    - (v) to the extent that such employee is acting as a senior accounting officer (as defined by Schedule 46, Paragraph 16 of the UK Finance Act 2009 or equivalent position in the Republic of Ireland or any other relevant jurisdiction of a **Company**);
    - (vi) with respect to any **Claim** in which such employee is alleged to be liable as a de facto director of a **Company**; or
    - (vii) management committee member, member of any supervisory or management board.

**Insured Person** does not include external auditors of a **Company** and does not include any liquidator, receiver, administrator, supervisor or other insolvency office-holder of a **Company** or of a **Company's** assets.

3.15 **Insurer** means Chubb European Group SE.

3.16 **Investigation** means a formal or official investigation, examination or inquiry into a **Company** or an **Insured Person** in their **Insured Capacity** by a governmental, regulatory, law enforcement, professional or statutory body, including but not limited to the receipt of a target letter or Wells Notice, at which their attendance or co-operation is first requested or required in writing during the **Policy Period**. For the sole purposes of giving effect to the terms of this D&O Section where the context requires, and subject always to the terms of Extension 2.16, **Investigation** also includes **Pre-Investigation**.

**Investigation** shall not include any routine or regularly scheduled internal supervision, inspection, compliance, review, examination, production or audit.

3.17 **Investigation Costs** means reasonable and necessary costs, expenses, charges and fees incurred by or on behalf of an **Insured Person** with the **Insurer's** prior written consent (which shall not be unreasonably delayed or withheld) in direct response to an **Investigation**, other than remuneration or cost of time of an **Insured Person**, and internal corporate overheads.

3.18 **Limit of Liability** means the amount stated in Item 3 of the Schedule.

3.19 **Loss** means:

- (a) for the purposes of Insuring Clauses 1.1 and 1.2, the amount which an **Insured Person** is legally and personally obligated to pay on account of a **Claim** 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 applicable laws;
  - (iii) **Prosecution Costs;**
  - (iv) **Bail Bond Costs; Crisis Costs; Deprivation of Assets Expenses;**
  - (v) **Reputation Protection Expenses; Public Relations Expenses;** and
  - (vi) **Relative Costs;**
- (b) for the purposes of Insuring Clauses 1.3 and 1.4, **Investigation Costs;**
- (c) for the purposes of Insuring Clause 1.5, **Subpoena Costs;**
- (d) **Civil Fines and Penalties; Derivative Investigation Costs; Mitigation Loss; Pre-investigation** costs under Extension 2.16; or
- (e) any items not otherwise set out in this Definition 3.19 for which cover is expressly provided in the Extensions or by Endorsement to this D&O Section.

For the purposes of all Insuring Clauses and Extensions, **Loss** does not include:

- (ii) any matter which it is not permissible to insure or is uninsurable under applicable laws;
- (iii) fines or penalties (other than **Civil Fines and Penalties**); or
- (iv) taxes or sums reflecting taxes except as provided under Extension 2.9; or
- (v) any costs or expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of **Pollution** or restoring natural resources or property to their original state.

3.20 **Mitigation Loss** means settlement, costs and expenses incurred as a result of action taken by the **Insured Person** or the **Company** solely to prevent or mitigate a potential **Claim** against an **Insured Person** which if it were to become a **Claim** would give rise to a covered **Loss** under this D&O Section.

3.21 **Not-For-Profit Entity** means a registered charity or a trade association or other non-profit Company in the United Kingdom.

- 3.22 **Outside Directorship** means the position of director, officer, trustee, governor, or the equivalent in any jurisdiction, held by an **Insured Person** in his or her **Insured Capacity** in an **Outside Entity** where such position is assumed and maintained with the knowledge and consent of, or at the specific request of, a **Company**.
- 3.23 **Outside Entity** means an entity which is:
- (a) not a **Company** and has no **Securities** traded on any exchange in the **USA**; or
  - (b) a **Not-For-Profit Entity**.
- 3.24 **Policy Period** shall mean as defined in General Section Clause 3.11. For the sole purposes of giving effect to the terms of this D&O Section where the context requires, and subject always to the terms of Extension 2.6, **Policy Period** also includes **Discovery Period**.
- 3.25 **Pre-Investigation** means:
- (a) a raid or on-site visit to a **Company** or an **Insured Person** by a governmental, regulatory, law enforcement, professional or statutory body, first occurring during the **Policy Period**, that involves the production, review, copying or confiscation of records, or interview of an **Insured Person**;
  - (b) any formal notification by a **Company** or an **Insured Person** to a governmental, regulatory, law enforcement, professional or statutory body, first given during the **Policy Period**, where such **Insured Person** reasonably considers that a material breach of its legal or regulatory duty has occurred or may occur; or
  - (c) an internal inquiry conducted by a **Company** if and to the extent such inquiry is requested by a governmental, regulatory, law enforcement, professional or statutory body following a formal notification described in (b) immediately above.
- 3.26 **Prosecution Costs** means the reasonable legal fees and related professional charges incurred by an **Insured Person** with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed) 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;
  - (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**; or
  - (e) the deportation of an **Insured Person** following revocation of an otherwise proper, current and valid immigration status for any reason other than the **Insured Person**'s conviction of a criminal offence.
- The sub-limit is the amount specified in Item 4.5 of the Schedule.
- 3.27 **Public Relations Expenses** means the reasonable fees and related expenses incurred by an **Insured Person** in hiring a public relations firm or consultant, crisis management firm, or law firm, with the prior written consent of the **Insurer** (not to be unreasonably delayed or withheld), in order to prevent or limit the effects of negative publicity which it is anticipated may arise from a **Claim**. The sub-limit is the amount specified in Item 4.7 of the Schedule.
- 3.28 **Relative Costs** means the reasonable travel and accommodation costs and expenses incurred by an **Insured Person** for the attendance of such **Insured Person** and their lawful spouse or domestic partner and any children under the age of eighteen for one hearing of a **Claim** if such hearing takes place in a country where that **Insured Person** is not ordinarily resident. The sub-limit is the amount specified in Item 4.9 of the Schedule.
- 3.29 **Reputation Protection Expenses** means the reasonable fees and related expenses incurred by an **Insured Person** in hiring a public relations firm or consultant, with the prior written consent of the **Insurer** (not to be unreasonably delayed or withheld), in order to disseminate a **Final Adjudication** of a **Claim** in favour of such **Insured Person**. The sub-limit is the amount specified in Item 4.8 of the Schedule.
- 3.30 **Retired Insured Persons** means **Insured Persons** who have voluntarily ceased to act in their **Insured Capacity** prior to the expiry of the **Policy Period** and in any event for reasons other than:
- (a) disqualification from holding office as a company director; or
  - (b) a **Transaction**; or

(c) insolvency of a **Company**.

3.31 **Securities** means any equity or debt instrument issued by a **Company**.

3.32 **Shadow Director** means a director or officer or employee of a **Company** acting or allegedly acting as a shadow director, as defined in as defined in the Companies Act 2014, of an entity other than a **Company**.

3.33 **Single Claim** means all **Claims** or other matters giving rise to a claim under this D&O Section in connection with the same originating source or cause or the same underlying source or cause, regardless of whether such matters involve the same or different claimants, **Insured Persons**, events or legal causes of action. A **Single Claim** shall in any event include all **Claims** or other matters giving rise to a claim under this D&O Section that relate to or are in any way connected with, or contribute to the insolvency of a **Company**.

3.34 **Subpoena** means a subpoena or witness summons served on an **Insured Person** in his or her **Insured Capacity**, as a witness other than as a target of a **Claim** or **Investigation**, 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 as a witness, in relation to a **Claim**.

3.35 **Subpoena Costs** means reasonable legal representation fees and related professional charges which an **Insured Person** incurs personally, with the prior written consent of the **Insurer** (not to be unreasonably delayed or withheld), in producing information sought by, or in attending to give evidence sought by, a **Subpoena**.

**Subpoena Costs** does not include the remuneration or cost of time of an **Insured Person** nor internal corporate overheads.

3.36 **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**.

3.37 **Wrongful Act** means any actual or alleged 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** in their **Insured Capacity**, or any matter claimed against them solely by reason of their serving in such **Insured Capacity**.

**Wrongful Act** includes an **Employment Wrongful Act**.

## 4. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** under this D&O Section:

4.1 based upon, arising from, or attributable to any **Wrongful Act** or a series of related **Wrongful Acts** in any **Claim** or circumstance of which written notice has been accepted under any policy which this D&O Section renews, replaces or follows in whole or in part;

4.2 based upon, arising from, or attributable to, or derived from substantially the same facts or circumstances alleged in, any pending or prior proceedings of any nature against any **Insured Person** or **Outside Entity** commenced before the date at Item 4.14 of the Schedule;

4.3 for

(i) bodily injury, mental illness, emotional distress, injury to feelings, sickness, disease or death of any person; or

(ii) damage to or destruction of tangible property including loss of use of such property.

However, this exclusion shall not apply to **Defence Costs** or **Investigation Costs** which are not **Indemnifiable**, or emotional distress or injury to feelings resulting from an **Employment Wrongful Act**;

4.4 based upon, arising from or attributable to (a) any deliberately dishonest or deliberately fraudulent act or omission or any intentional breach of law by an **Insured Person**, or (b) any personal profit or advantage gained by such **Insured Person** to which they were not legally entitled.

This Exclusion shall only apply if the relevant conduct is established through a **Final Adjudication** in the underlying **Claim**;

- 4.5 based upon, arising from, or attributable to a **USA Claim** by or on behalf of a **Company** or (where applicable) **Outside Entity** against an **Insured Person** except:
- (i) a **Claim** for a contribution or indemnity if such **Claim** results directly from another **Claim** that would otherwise be covered under this D&O Section;
  - (ii) a derivative proceeding brought without the solicitation or active participation of an **Insured Person** or (where applicable) **Outside Entity**;
  - (iii) a **Claim** brought by or on behalf of a **Company** by an insolvency practitioner; or
  - (iv) a **Claim** against an **Insured Person** who is no longer acting in an **Insured Capacity** when that **Claim** is first made.
- (v) **Defence Costs**
- 4.6 based upon, arising from, or attributable to any public offering of any **Securities** during the **Policy Period**.

## 5. Conditions

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### Limits of Liability

- 5.1 The **Insurer's** maximum aggregate liability for all **Loss** arising from a **Single Claim**, whether covered under one or more of the Insuring Clauses and Extensions (except to the extent Extensions 2.2, or 2.3 apply and subject to their terms) and irrespective of the amount claimed, the number of **Insured Persons** who claim under this D&O Section, or when during the **Policy Period** such claims are made, shall not exceed the **Limit of Liability**.
- 5.2 Notwithstanding the above, unless expressly provided otherwise, the **Insurer's** maximum aggregate liability for all **Loss** in respect of which a sub-limit is specified shall be the amount stated in the Schedule and shall apply irrespective of the number of claims made under this D&O Section, the amount claimed, the number of **Insured Persons** who claim, or when during the **Policy Period** such claims are made. Except as provided in Extensions 2.2 and 2.3, sub-limits are part of and not in addition to the **Limit of Liability**.
- 5.3 In respect of Extension 2.3 (Additional Excess Limit for Non-Indemnifiable Loss):
- (a) the **Insurer** shall not be liable until the **Limit of Liability** and all valid and collectable insurance written specifically excess of this D&O Section has been exhausted by payment under such excess insurance; and
  - (b) the maximum amount of the **Insurer's** liability under such Extension shall not exceed the Aggregate Additional Excess Limit stated in Item 4.2 of the Schedule, which is the **Insurer's** maximum aggregate liability for all **Loss** under this Extension for all directors irrespective of the number of claims under this D&O Section, the amount claimed or the number of directors who claim, or when during the **Policy Period** such claims are made, and is in addition to, and not part of, the **Limit of Liability**.

### Related Claims and Matters

- 5.4 A **Single Claim** shall attach to this D&O Section only if the notice of the first **Claim** or other matter giving rise to a claim under this D&O Section that became a **Single Claim** was given by the **Insured** during the **Policy Period**.

### Retention

- 5.5 The Retention amounts stated in Item 4.13 of the Schedule shall apply to each and every **Single Claim**. The Retention shall be uninsured and borne by the **Insured Person**. The **Insurer's** liability shall apply only to **Loss** which is in excess of the Retention.
- 5.6 Where different Retentions under this D&O Section apply to a **Claim**, the highest Retention amount shall be applied once.
- 5.7 The Retention does not apply to **Loss** which is not **Indemnifiable**. If an **Insured Person** is **Indemnifiable** by a **Company** for a covered **Loss** and such **Company** does not indemnify that **Loss**, the **Insurer** will pay it on behalf of the **Insured Person** without applying the Retention. However, the Retention amount shall then be reimbursed by the **Policyholder** to the **Insurer**.

- 5.8 In the event an **Insured Person** is required pursuant to Sections 234(3) and 205 of the UK Companies Act 2006 or equivalent in any jurisdiction to repay sums advanced to them by a **Company**, and covered under Insuring Clause 1.2, that would otherwise have been covered under Insuring Clause 1.1:
- (a) such sums shall be deemed to have been **Loss** which was not **Indemnifiable**;
  - (b) the total amount paid by the **Insurer** to such **Company** under Insuring Clause 1.2 together with the amount of the Retention (if applicable) shall be deemed to have been paid by the **Insurer** to the **Insured Person** under Insuring Clause 1.1;
  - (c) the **Insurer** shall pay the amount of the Retention (if applicable) to the **Company**; and
  - (d) both the **Company** and **Insured Person** shall thereby be mutually released from any obligation pursuant to Sections 234(3) and 205 of the UK Companies Act 2006 or equivalent in any jurisdiction in respect of the amounts stated in (b) immediately above.

## Defence and Settlement

- 5.9 Except as provided in Clause 5.14 below, it is the duty of the **Insured Person** 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 Person** in the investigation, defence, negotiation and settlement of any **Claim** where **Loss** appears reasonably likely to be covered in whole or in part by this D&O Section.
- 5.10 The **Insured Person** shall not settle or offer to settle any **Claim**, incur any **Loss** (other than where Extension 2.5 applies) or otherwise assume any contractual obligation, or admit any liability with respect to a **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably delayed or withheld. A **Pre-Investigation** shall not constitute an admission of liability.
- 5.11 The **Insurer** will accept as reasonable and necessary the retention of separate legal representation by the **Insured Persons** to the extent required by an actual material conflict of interest between such **Insured Persons**.
- 5.12 The **Insured Person** shall not do anything which could prejudice the **Insurer** in respect of a claim under this D&O Section. Further, it shall give to the **Insurer** all information the **Insurer** may reasonably require, and fully co-operate and assist in the conduct of any investigation into the claim under this D&O Section by the **Insurer**.
- 5.13 The **Insurer** shall have the right but not the duty to defend a **Claim** brought against an **Insured Person** by or on behalf of:
- (a) a **Company**; or
  - (b) an **Outside Entity**
- unless such **Claim** is:
- (ii) a **Claim** for a contribution or indemnity if such **Claim** results directly from another **Claim** that would otherwise be covered under this D&O Section;
  - (iii) a derivative proceeding brought without the solicitation or active participation of an **Insured Person** or (where applicable) **Outside Entity**; or
  - (iv) a **Claim** brought by or on behalf of a **Company** by an insolvency practitioner.

In the event of the invocation of this clause, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** in relation to such **Claim**.

- 5.14 In the event of a dispute or difference between the **Insurer** and the **Insured Person** about whether a **Claim** should be defended or settled, the **Insurer** shall be entitled to resolve such dispute or difference by obtaining, at its own cost, an opinion as to whether the **Claim** could be successfully defended, from a suitably experienced Senior Counsel approved by the **Insured Person**. The opinion shall be binding upon the **Insurer** and **Insured Person** who shall act accordingly.

## Advancement of Costs, Allocation, and Insurability

- 5.15 The **Insurer** shall advance covered **Defence Costs**, **Investigation Costs** and any other costs which constitute **Loss** under this D&O Section, including **Indemnifiable** amounts which a **Company** does not advance. Such advanced sums shall be repaid to the **Insurer** by the relevant **Insured Person** in the event it is later established the **Insured Person** was in fact not covered for them.

- 5.16 In the event of a covered **Claim** anywhere other than in the **USA**, against both an **Insured Person** and a **Company**, then if the **Insured Person** and such **Company** are being represented by the same lawyers, 100% of the **Defence Costs** shall be deemed allocated to covered **Loss**.

Any allocation or payment of **Defence Costs**, **Investigation Costs**, and any other costs which constitute **Loss** under this D&O Section shall not create any presumption as to the allocation of other **Loss**.

- 5.17 Except as provided in Condition 5.18 below, in the event of:
- (a) a covered **Claim** against an **Insured Person** and a non-covered party; or
  - (b) a **Claim** against an **Insured Person** which is not wholly covered by this D&O Section,
- the **Insurer** and the **Insured Person** shall use their best endeavours to determine a reasonable allocation of **Loss** that is covered by this D&O Section and loss that is not covered on the basis of the relative legal and financial exposures.
- 5.18 If the **Insured Person** and the **Insurer** cannot agree on an allocation, the **Insurer**, if requested by the **Insured Person**, shall submit the dispute to a suitably experienced Senior Counsel, agreed by the parties but if not agreed then nominated by the Chairman of the Law Society of Ireland, for a binding written neutral evaluation. Such evaluation shall be delivered within 14 days of the parties each submitting a single written submission with such other information the Senior Counsel shall reasonably require.
- 5.19 In the event of a dispute or difference between the **Insurer** and an **Insured Person** as to whether cover is permissible or a matter is insurable under applicable law, the reasonable and necessary fees, costs and expenses incurred by the **Insured Person** with the **Insurer's** prior written consent, in demonstrating to the **Insurer's** reasonable satisfaction such cover is permissible or matters are insurable, shall be reimbursed by the **Insurer**.

### **Duty of Disclosure and Severability**

- 5.20 The **Insured** has a duty to answer all questions posed by the **Insurer** honestly and with reasonable care. The **Insurer** shall have no remedy for any breach, by an **Insured Person**, of its duty to make of disclosure prior to inception of, or in connection with, this D&O Section, unless the **Insurer** demonstrates:
- (a) the **Insured**, in answering the **Insurer's** questions, provided information which the **Insured Person** knew was false or misleading;
  - (b) the **Insured** consciously disregarded whether, in answering the **Insurer's** questions, information which the **Insured** provided was false or misleading; or
  - (c) any conduct (relative to the contract or the steps leading to its formation) by the **Insured** involves fraud of any other kind.
- 5.21 With respect to this D&O Section, the **Presentation** shall be construed as a separate presentation by each **Insured**, and the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person** with respect to statements and information in the **Presentation**.
- 5.22 In respect of Insuring Clauses 1.2 and 1.4, the knowledge of an **Insured Person** indemnified by a **Company** shall be imputed to such **Company** with respect to statements and information in the **Presentation**.
- 5.23 In respect of any other cover provided to a **Company** in this D&O Section under an Extension or Endorsement, the knowledge of any of the finance director, chief executive, managing director or chairman of such **Company** shall be imputed to it with respect to statements and information in the **Presentation**.

### **Order of Payments**

- 5.24 **Loss** that is payable to an **Insured Person** under this D&O Section will be prioritised over **Loss** payable to a **Company**. Where in the reasonable opinion of the **Insurer** the **Limit of Liability** is at risk of exhaustion, it may elect to defer payment of **Loss** to a **Company** solely for the purposes of preserving the **Limit of Liability** for the payment of **Loss** to an **Insured Person**.
- 5.25 The insolvency of a **Company** shall not affect the operation of this Clause 5.24.

### **Other Insurance**

- 5.26 If an **Insured Person** would (but for the existence of this D&O Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this D&O Section) in respect of a **Claim** or any

other matter claimed under this D&O Section, the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this D&O Section) under any other such insurance policy.

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## Section 3: Corporate Legal Liability (“this CLL Section”)

### 1. Insuring Clauses

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#### Corporate Legal Liability

1.1 The **Insurer** shall pay **Loss** on behalf of each **Company**.

#### Health & Safety Prosecutions and Investigations

1.2 The **Insurer** shall pay **Health & Safety Costs** on behalf of each **Company**.

#### Corporate Manslaughter Prosecutions and Investigations

1.3 The **Insurer** shall pay **Corporate Manslaughter Costs** on behalf of each **Company**.

### 2. Extensions

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#### Limit of Liability Each Single Claim

2.1 A separate **Limit of Liability** shall apply in respect of all **Loss** arising from each **Single Claim**, subject to the conditions of this CLL Section.

#### Acquisition or Creation of Another Company

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

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

that entity shall automatically become a **Company** under this CLL Section, with effect from the date of such acquisition or creation, but only with respect to **Wrongful Acts** after such acquisition or creation.

However, if such acquired or created entity:

- (ii) has gross consolidated assets that increase the total consolidated assets of all the **Companies** together by more than 25% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**; or
- (iii) has any of its securities listed on any exchange in the **USA**,

the **Policyholder** shall give written notice of such acquisition or creation to the **Insurer** as soon as practicable and also such information as the **Insurer** may require. The **Insurer** shall have the right to amend the terms of this CLL Section including charging an additional premium.

The **Insurer** may agree to provide cover for **Wrongful Acts**, following the receipt of any information the **Insurer** may require and subject to any additional premium and amended terms and conditions.

#### Emergency Defence Costs

2.3 If it is not possible for the **Insured** to obtain the **Insurer**'s prior written consent to the incurring of **Defence Costs**, **Health & Safety Costs**, **Corporate Manslaughter Costs**, **Identity Fraud Costs**, **Public Relations Expenses** or **Media Costs** the **Insurer** will waive the requirement for prior written consent, as long as the **Insurer**'s consent is sought within thirty days of the first of such costs being incurred.

#### Compensation for Court Attendance and Staff Disruption

2.4 With regard to each **Claim**, the **Insurer** shall pay, on behalf of each **Insured**, **Attendance Compensation**. The **Insurer** shall pay the compensation to the **Policyholder**. Compensation provided for by this Extension 2.4 in respect of

a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a **Claim**.

### Identity Fraud Costs

2.5 If a party other than a **Company** or any of its employees enters into an agreement with any entity fraudulently representing themselves as a **Company**, then the **Insurer** shall pay **Identity Fraud Costs**

The sub-limit of liability for all payments under this Extension is 10% of the Limit of Liability in Item 3.2 of the Schedule.

### Investigations Public Relations Expenses

2.6 This CLL Section shall extend to include Public Relations Expenses arising from a Corporate Manslaughter Investigation or Health and Safety Investigation. The sub-limit of liability for all payments under this Extension is specified in Item 5.9 of the Schedule.

### Health & Safety Interventions

2.7 This CLL Section shall extend to include, as a **Claim**, a written notice of a material breach of health and safety law issued to the **Company** by a **Health & Safety Executive** which requires payment of a Fee For Intervention pursuant to the UK Health & Safety (Fees) Regulations 2012 or equivalent in any jurisdiction, and any proceeding brought against the **Company** by that **Health & Safety Executive**, to enforce such requirement to pay.

This CLL Section is further extended to include, as **Loss**, the Fee For Intervention. The sub-limit of liability for the Fee For Intervention is EUR 25,000

### Legal Help Line

2.8 The **Policyholder** may, during the **Policy Period**, obtain 42 minutes of free consultation, in respect of each separate corporate legal liability matter (and up to a maximum of 4 separate matters), via a hotline administered by the law firm Gateley Plc.

The **Policyholder** may consult beyond expiry of the 42 minutes, but will be charged for the additional time. Further details of the service can be found on [www.chubb.com/ie/gateley](http://www.chubb.com/ie/gateley).

Gateley Plc is not the **Insurer's** agent for the giving or receiving of notices under this CLL Section and this Extension does not affect the **Insured's** reporting obligations set out elsewhere in the General Section Conditions.

The **Insureds** accept that the **Insurer** shall have no responsibility for, or liability arising out of, advice or services provided by Gateley Plc.

## 3. Definitions

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When used in bold type in this CLL Section:

3.1 **Claim** means the following first commenced during the **Policy Period**:

(a) for the purposes of Insuring Clause 1.1:

- (i) a written demand for specific monetary compensation or specific non-pecuniary relief;
- (ii) a civil proceeding including third party proceeding, counterclaim or arbitration proceeding; or
- (iii) a criminal proceeding;

against a **Company**, for a **Wrongful Act**, but not including:

- a. any written demand, civil proceeding or criminal proceeding made, brought, maintained or instigated by a **Health & Safety Executive** or any other administrative or regulatory body;
- b. any **Health & Safety Prosecution** or any prosecution for an alleged breach of any health and safety legislation of a jurisdiction outside the United Kingdom and the Republic of Ireland; or
- c. any **Corporate Manslaughter Prosecution**;

(b) for the purposes of giving effect to Insuring Clause 1.2, and subject to its terms, a **Health & Safety Investigation** or a **Health & Safety Prosecution**; or

- (c) for the purposes of giving effect to Insuring Clause 1.3, and subject to its terms, a **Corporate Manslaughter Investigation** or a **Corporate Manslaughter Prosecution**;
  - (d) for the purposes of giving effect to Extension 2.5, and subject to its terms, an **Identity Fraud Claim**;
  - (e) a written notice of a material breach of health and safety law issued to the **Company** by a **Health & Safety Executive** which requires payment of a Fee For Intervention, and any proceeding brought against the **Company** by that **Health & Safety Executive**, to enforce such requirement to pay.
- 3.2 **Corporate Manslaughter Costs** means:
- (a) reasonable legal representation fees and related professional charges which a **Company** incurs in its representation at a **Corporate Manslaughter Investigation** with the **Insurer's** prior written consent (not to be unreasonably delayed or withheld) . The sub-limit of liability is specified in Item 5.8 of the Schedule; and
  - (b) **Defence Costs** on account of a **Corporate Manslaughter Prosecution**.
- 3.3 **Corporate Manslaughter Investigation** means a formal inquiry into the conduct of a **Company** conducted by a **Health & Safety Executive** under the UK Corporate Manslaughter and Corporate Homicide Act 2007 or equivalent in any jurisdiction, first commenced during the **Policy Period**. **Corporate Manslaughter Investigation** does not include compliance with a public order pursuant to s10 of the UK Corporate Manslaughter and Corporate Homicide Act 2007 or equivalent in any jurisdiction.
- 3.4 **Corporate Manslaughter Prosecution** means a criminal proceeding for corporate manslaughter or corporate homicide under the UK Corporate Manslaughter and Corporate Homicide Act 2007 or equivalent in any jurisdiction first commenced during the **Policy Period**.
- 3.5 **Cyber Wrongful Act** means a **Wrongful Act** involving use of, or alleged use of, the internet or of a computer.
- 3.6 **Defence Costs** means reasonable and necessary costs, expenses, charges and fees incurred by the **Insured** with the **Insurer's** prior written consent (not to be unreasonably delayed or withheld) in direct response to a **Claim**. **Defence Costs** also includes a premium paid for insurance instruments or for bonds which are required in order to institute an appeal but without any obligation to furnish or procure such insurance instruments or bonds. **Defence Costs** does not include internal corporate costs and expenses of a **Company**.
- Defence Costs** does not include **Identity Fraud Costs**.
- 3.7 **Health & Safety Costs** means:
- (a) reasonable legal representation fees and related professional charges which a **Company** incurs in its representation at a **Health & Safety Investigation** with the **Insurer's** prior written consent (not to be unreasonably delayed or withheld). The sub-limit of liability is specified in Item 5.7 of the Schedule; and
  - (b) **Defence Costs** on account of a **Health & Safety Prosecution**.
- 3.8 **Health & Safety Executive** means:
- (a) the United Kingdom's Health and Safety Executive;
  - (b) the Health and Safety Executive for Northern Ireland; or
  - (c) the Republic of Ireland's Health and Safety Authority.
- 3.9 **Health & Safety Investigation** means a formal inquiry into the conduct of a **Company** conducted by a **Health & Safety Executive** under the Safety Health and Welfare at Work Act 2005 or of any other health and safety legislation of Ireland (except the UK Corporate Manslaughter and Corporate Homicide Act 2007 or equivalent in any jurisdiction), first commenced during the **Policy Period**.
- 3.10 **Health & Safety Prosecution** means a criminal proceeding made against a **Company**, alleging a **Health & Safety Wrongful Act**, first commenced during the **Policy Period**.
- 3.11 **Health & Safety Wrongful Act** means a breach of the Safety Health and Welfare at Work Act 2005 or of any other health and safety legislation of the Republic of Ireland (except the UK Corporate Manslaughter and Corporate Homicide Act 2007 or equivalent in any jurisdiction ).
- 3.12 **Identity Fraud Claim** means an entity first seeking during the **Policy Period** to enforce an agreement such entity entered into with a party other than a **Company** or any of its employees as a result of such party fraudulently representing themselves as a **Company**.

- 3.13 **Identity Fraud Costs** means any reasonable fees, costs and expenses incurred by the **Company** in establishing that a fraudulent misrepresentation had occurred, in response to an **Identity Fraud Claim**.
- 3.14 **Limit of Liability** means the amount stated in Item 3.2 of the Schedule
- 3.15 **Loss** means the amount which a **Company** is legally liable to pay on account of a **Claim** including:
- (a) **Defence Costs**;
  - (b) **Corporate Manslaughter Costs**;
  - (c) **Health & Safety Costs**;
  - (d) **Identity Fraud Costs**;
  - (e) **Public Relations Expenses**;
  - (f) awards of damages, including punitive, exemplary or aggravated damages, the multiple portion of any multiplied damages award, judgments, pre- and post- judgment interest, awards of claimant's costs and sums payable pursuant to any settlements;
  - (g) **Media Costs**;
  - (h) **Attendance Compensation**; or
  - (i) a Fee for Intervention payable by the **Company** pursuant to the UK Health & Safety (Fees) regulations 2012 or equivalent in any jurisdiction.
- Loss** does not include:
- (ii) any matter which it is not permissible to insure or uninsurable under applicable law; or
  - (iii) fines or penalties.
- 3.16 **Media Costs** means:
- (a) reasonable costs, expenses, charges and fees of an independent public relations consultant or crisis management consultant which are incurred by a **Company** for making a public communication with respect to, or for preventing or minimising business disruption and adverse publicity resulting from, a **Claim** (other than a **Corporate Manslaughter Investigation** or **Health & Safety Investigation**) incurred during the first 180 days following the giving of written notice of such **Claim** to the **Insurer** pursuant to General Section 8; or
  - (b) reasonable costs, expenses, charges and fees of an independent public relations consultant employed by a **Company** to reduce the damage caused to that **Company's** reputation by a **Claim** (other than a **Corporate Manslaughter Investigation** or **Health & Safety Investigation**) against that **Company** by publishing the results of that **Claim** in the event of a final non-appealable judgment, and:
    - (i) there has been no finding of liability, or of any wrongful act or omission, error, misstatement, misleading statement, neglect, breach of duty or breach of trust on the part of that **Company**; or
    - (ii) that **Company** has not been found guilty of corporate manslaughter or corporate homicide.
- 3.17 **Personal Injury** means bodily injury, sickness, disease or death of any natural person, but not mental or emotional distress.
- 3.18 **Public Relations Expenses** means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which the **Policyholder** may, in the reasonable exercise of its discretion, engage with the written consent of the **Insurer**, not to be unreasonably withheld or delayed, in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a **Corporate Manslaughter Investigation** or **Health & Safety Investigation**.
- 3.19 **Single Claim** means all **Claims** or other matters giving rise to a claim under this CLL Section in connection with the same originating source or cause or the same underlying source or cause, regardless of whether such matters involve the same or different claimants, **Insureds**, events or legal causes of action. A **Single Claim** shall in any event include all **Claims** or other matters giving rise to a claim under this CLL Section that relate to or are in any way connected with, or contribute to the insolvency of a **Company**.
- 3.20 **Wrongful Act** means:
- (a) any wrongful act or omission, error, misstatement, misleading statement, neglect, or breach of duty or breach of trust; or

(b) for the purposes of Insuring Clause 1.2 only, any **Health & Safety Wrongful Act**, committed, attempted, or allegedly committed or attempted, by a **Company**.

3.21 **Wrongful Employment Practice** means any of the following employment-related matters committed or attempted by a Company: wrongful or unfair dismissal, discharge or termination of employment (including constructive dismissal), breach of any written, oral or implied employment contract or quasi-employment contract, wrongful discrimination, wrongful segregation, wrongful classification, wrongful harassment (whether sexual or non-sexual), bullying, wrongful demotion or denial of tenure, wrongful failure or refusal to promote, negligent evaluation, wrongful discipline, negligent reference, defamation, invasion of privacy, breach of confidentiality, malicious falsehood, wrongful retaliation, failure to provide or consistently enforce employment-related corporate policies and procedures, negligent retention, negligent supervision, negligent hiring, negligent training, misrepresentation, false imprisonment, wrongful infliction of emotional distress, mental anguish or humiliation, wrongful deprivation of a career opportunity, failure to grant tenure.

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## 4. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** under this CLL Section:

- 4.1 based upon, arising from or attributable to any **Wrongful Act** or a series of related **Wrongful Acts** in any **Claim** or circumstance of which written notice has been accepted under any policy which this CLL Section renews, replaces or follows in whole or in part;
- 4.2 based upon, arising from, or attributable to; or derived from substantially the same facts or circumstances alleged in, any pending or prior proceedings of any nature against any **Insured** commenced before the date stated in Item 5.11 of the Schedule.
- 4.3 as a result of a **Claim** seeking remedy for **Personal Injury** or **Property Damage**, except **Defence Costs** up to the sublimit for **Personal Injury** or **Property Damage Defence Costs** stated in Item 5.1 of the Schedule; however, this exclusion shall not apply to Insuring Clause 1.2 and Insuring Clause 1.3;
- 4.4 based upon, arising from, or in consequence of any **Wrongful Act** in any way connected to a 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;
- 4.5 based upon, arising from, or in consequence of any actual or alleged **Wrongful Employment Practice**;
- 4.6 based upon, arising from or in consequence of any dishonest or fraudulent act or omission or any intentional breach of law by a **Company** or its director or officer established by a **Final Adjudication**;
- 4.7 based upon, arising from or in consequence of any **Company** having gained any profit or advantage to which such **Company** was not legally entitled established by a **Final Adjudication**;
- 4.8 as a result of a **Claim** seeking remedy for breach of any law or regulation or other legal obligation concerning competition or for tortious interference with trade;
- 4.9 as a result of a **Claim** seeking remedy for the rendering or failure to render any service or advice to a customer or client of a **Company**, except **Defence Costs** up to the sublimit for Services and Advice **Defence Costs** stated in Item 5.2 of the Schedule which shall only be paid by the **Insurer** following a **Final Adjudication**;
- 4.10 as a result of a **Claim** seeking remedy for misappropriation, infringement or breach of copyright, patent, trademark, trade secret or any other intellectual property right, except **Defence Costs** up to the sublimit for Intellectual Property **Defence Costs** stated in Item 5.3 of the Schedule, and except a **Claim** which is by a shareholder of a **Company** in their capacity as such and not in the capacity of victim of such misappropriation, infringement or breach or dependant, heir, legal representative or assign of such a sufferer, and which is not at the instigation or solicitation of a **Company**;
- 4.11 based upon, arising from or in consequence of any public offering, solicitation, sale, distribution or issuance of securities, except **Defence Costs** up to the sublimit for Public Offering **Defence Costs** stated in Item 5.4 of the Schedule;
- 4.12 based upon, arising from or in consequence of any contractual obligation, except **Defence Costs** up to the sublimit for Contract Claim **Defence Costs** stated in Item 5.5 of the Schedule which shall only be paid by the **Insurer** following a **Final Adjudication**;
- 4.13 based upon, arising from or in consequence of **Pollution**, except **Defence Costs** up to the sublimit for **Pollution Defence Costs** stated in Item 5.6 of the Schedule
- 4.14 in relation to direct or indirect tax obligations of any kind;
- 4.15 resulting from a **Claim** brought by or on behalf of any **Company** or any director or officer of a **Company**; or as a result of a **Claim** alleging a **Cyber Wrongful Act**.

## 5. Conditions

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### Duty of Disclosure and Severability

- 5.1 The **Insured** has a duty to answer all questions posed by the **Insurer** honestly and with reasonable care. The **Insurer** shall have no remedy for any breach, by an **Insured**, of its duty of disclosure prior to inception of, or in connection with, this CLL Section, unless the **Insurer** demonstrates:
- (a) the **Insured**, in answering the **Insurer's** questions, provided information which the **Insured** knew was false or misleading;
  - (b) the **Insured** consciously disregarded whether, in answering the **Insurer's** questions, information which the **Insured** provided was false or misleading; or
  - (c) any conduct (relative to the contract or the steps leading to its formation) by the **Insured** involves fraud of any other kind.
- 5.2 With respect to this CLL Section, the **Presentation** shall be construed as a separate presentation by each **Insured**.
- 5.3 For the purposes of the cover provided under this CLL Section:
- (a) the knowledge of any of the past or present finance director, chief executive or chief general counsel shall be imputed to the **Company** with respect to statements and information in the **Presentation**; and
  - (b) in relation to determining whether an exclusion applies, the facts pertaining to, and knowledge possessed by, any past, present or future director, company secretary, head of the legal department, head of the human resources department shall be imputed to the **Company**.

### Limits of Liability

- 5.4 The **Insurer's** maximum aggregate liability for all **Loss** arising from a **Single Claim**, irrespective of the number of claims made, the amount claimed, the number of **Insureds** who claim under this CLL Section, or when during the **Policy Period** such claims are made, shall not exceed the **Limit of Liability**.
- 5.5 Notwithstanding the above:
- (a) the **Insurer's** maximum liability for **Loss** in respect of which a sub-limit is specified, shall be the amount specified in the Schedule and shall apply irrespective of the number of claims made under this CLL Section, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made. Sub-limits are part of and not in addition to the maximum liability of the **Insurer** referred to above;
  - (b) the **Insurer's** maximum liability for **Health & Safety Costs** on account of **Health & Safety Investigations** or **Health & Safety Prosecutions** shall not exceed the sub-limit stated in Item 5.7 of the Schedule;
  - (c) the **Insurer's** maximum liability for **Defence Costs** on account of **Corporate Manslaughter Prosecutions** shall not exceed the sub-limit stated in Item 5.8 of the Schedule;
  - (d) the **Insurer's** maximum liability for all **Media Costs** shall not exceed the sub-limit of EUR 25,000;
  - (e) the **Insurer's** maximum liability for all **Identity Fraud Costs** shall not exceed 10% of the Limit of Liability in Item 3.2 of the Schedule;
  - (f) the **Insurer's** maximum liability for **Public Relations Expenses** on account of **Corporate Manslaughter Investigations** or **Health and Safety Investigations** shall not exceed the sub-limit stated in Item 5.9 of the Schedule; and
  - (g) the **Insurer's** maximum liability for all Fee For Interventions is EUR 25,000.

### Retention

- 5.6 The Retention amount stated in Item 5.10 of the Schedule shall apply to each and every **Single Claim**. The Retention shall be uninsured and borne by the **Company**. The **Insurer's** liability shall apply only to **Loss** which is in excess of the Retention.

### Related Claims and Matters

- 5.7 A **Single Claim** shall attach to this CLL Section only if the notice of the first **Claim** or other matter giving rise to a claim under this CLL Section that became a **Single Claim** was given by the **Insured** during the **Policy Period**.

## Other Insurance

5.8 If an **Insured** would (but for the existence of this CLL Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this CLL Section or any sub-limit) in respect of a **Claim**, the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this CLL Section) under any other such insurance policy.

## Defence and Settlement

- 5.9 The **Insurer** shall have the right, but not the duty, to defend **Claims** and appoint lawyers for that purpose.
- 5.10 The **Insured** shall not settle or offer to settle any **Claim**, incur any **Loss** or otherwise assume any contractual obligation or admit any liability with respect to a **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably delayed or withheld.
- 5.11 With respect to any **Claim**, the **Insurer** may at any time pay to the **Policyholder** the amount of the **Policy Limit** or any applicable sub-limit which remains uneroded, or the amount for which the **Claim** can be settled, whichever is the lowest. Such payment shall immediately discharge all liability of the **Insurer** in respect of the **Claim** including liability for further **Defence Costs** and liability for further **Attendance Compensation**.
- 5.12 The **Insured** shall not prejudice the **Insurer's** interests or its potential or actual rights of recovery, and shall provide to the **Insurer** such information and co-operation as the **Insurer** may reasonably require.
- 5.13 The **Insurer** shall advance covered **Defence Costs, Health & Safety Costs, Corporate Manslaughter Costs** and any other costs which constitute **Loss** under this CLL Section. Such advanced sums shall be repaid to the **Insurer** by the relevant **Insured** in the event it is later established the **Insured** was in fact not covered for them.

## Section 4: Employment Practices Liability (“this EPL Section”)

### 1. Insuring Clause

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1.1 The **Insurer** shall pay, on behalf of each **Insured, Loss**.

### 2. Extensions

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#### **Limit of Liability Each Single Claim**

2.1 A separate **Limit of Liability** shall apply in respect of all **Loss** arising from each **Single Claim**, subject to the conditions of this EPL Section.

#### **Compensation for Court Attendance and Staff Disruption**

2.2 With regard to each **Claim**, the **Insurer** shall pay, on behalf of each **Insured, Attendance Compensation**. The **Insurer** shall pay the compensation to the **Policyholder**. Compensation provided for by this Extension 2.2 in respect of a person’s attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a **Claim**.

#### **Acquisition or Creation of Another Company**

2.3 If, during the **Policy Period**, a **Company**

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

that entity shall automatically become a **Company** and its individuals set out in the **Insured Person** Definition 3.7 shall automatically become **Insured Persons** under this EPL Section, with effect from the date of such acquisition or creation, but only with respect to **Wrongful Acts** or conduct after, such acquisition or creation.

However, if such acquired or created entity:

- (i) causes the total number of persons employed by all **Companies** together to increase by more than 10%; or
- (ii) has any directors, officers, employees or volunteers in the **USA**, then:
  - (i) for that entity and its individuals set out in the **Insured Person** Definition 3.7 to become **Insureds** under this EPL Section, the **Policyholder** shall give written notice of such acquisition or creation, and such information as the **Insurer** may require, to the **Insurer** within 90 days following that acquisition or creation, whereupon they shall become **Insureds** with effect from the date of that acquisition or creation (but only with respect to **Wrongful Acts** after that acquisition or creation); and
  - (ii) the **Insurer** shall have the right to amend the terms of this EPL Section, including charging an additional premium and including terminating cover for that entity and its individuals set out in the **Insured Person** Definition 3.7, but only with effect from 90 days after that 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 and subject to any additional premium and amended terms and conditions.

#### **Crisis Costs, Public Relations Expenses & Reputation Protection Expenses**

2.4 This EPL Section covers, as **Loss**:

- (a) **Crisis Costs**;
- (b) **Public Relations Expenses**; or
- (c) **Reputation Protection Expenses**.

## Training & Programme Costs

2.5 This EPL Section covers as **Loss** all reasonable and necessary costs incurred by the **Insured** for educational, sensitivity or diversity training or minority development programmes in connection with a covered **Claim** and required under the terms of a judgment or final consent decree.

The **Insurer's** maximum liability for such costs shall be the sub-limit of 10% of the **Limit of Liability**.

## Legal Help Line

2.6 The **Policyholder** may, during the **Policy Period**, obtain 42 minutes of free consultation, in respect of each separate employment related matter (and up to a maximum of 4 separate matters), via a hotline administered by the law firm Gateley Plc.

2.7 The **Policyholder** may consult beyond expiry of the 42 minutes, but will be charged for the additional time. Further details of the service can be found on [www.chubb.com/ie/gateley](http://www.chubb.com/ie/gateley).

Gateley Plc is not the **Insurer's** agent for the giving or receiving of notices under this EPL Section and this Extension does not affect the **Insured's** reporting obligations set out elsewhere in the General Section Conditions.

The **Insureds** accept that the **Insurer** shall have no responsibility for, or liability arising out of, advice or services provided by Gateley Plc.

## 3. Definitions

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When used in bold type in this EPL Section:

3.1 **Benefits** means perquisites, fringe benefits, deferred compensation, payments (including insurance premiums) in connection with an employee benefit plan or pension scheme and all other payments to or for the benefit of an employee arising out of the employment relationship. **Benefits** does not include salary, wages, commissions, bonuses, **Stock Benefits** or un-deferred cash incentive compensation.

3.2 **Claim** means the following, first commenced during the **Policy Period**:

- (a) a written demand for monetary relief (including any request to waive or suspend a statute of limitations) or an assertion of a legal right;
- (b) a civil proceeding including tribunal proceeding, application for injunctive or non-pecuniary relief, request for reinstatement or re-engagement, counterclaim or arbitration proceeding;
- (c) a criminal proceeding; or
- (d) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, including such proceeding brought by or in association with the Equal Employment Opportunity Commission (of the **USA**) or any similar governmental agency anywhere in the world with jurisdiction over an **Company's** employment practices (however, in the context of an audit conducted by the Office of Federal Contract Compliance Programs (of the **USA**), **Claim** shall be limited to a Notice of Violation, an Order to Show Cause or a written demand for monetary or injunctive relief),

made by or on behalf of any past, present or prospective director, officer, employee, volunteer or **Independent Contractor** of a **Company** against an **Insured**, for a **Wrongful Act**.

**Claim** does not include any labour or grievance arbitration or proceeding pursuant to a collective bargaining agreement.

3.3 **Class or Mass Action** means a **Claim**:

- (a) made by or on behalf of five or more natural person claimants acting in concert; or
- (b) made by or on behalf of one to four natural person claimants and which:
  - (i) within the meaning of the applicable rules or legislation relating to class actions in the jurisdiction where the **Claim** is made, is a class action or an action in which a class certification is requested;
  - (ii) includes a pattern and practice allegation or systematic discrimination allegation and seeks a remedy or relief on behalf of a group of individuals; or

- (c) made by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants.

3.4 **Crisis Costs** means any reasonable professional fees, costs or expenses of any accredited:

- (a) counsellor; or
- (b) tax adviser,

retained by an **Insured Person** with the **Insurer's** prior consent (not to be unreasonably withheld or delayed), in respect of any **Claim**. The sub-limit of liability for **Crisis Costs** is specified in Item [6.1] of the Schedule.

3.5 **Defence Costs** means reasonable and necessary costs, expenses, charges and fees incurred in direct response to a **Claim** (other than internal corporate costs and expenses of a **Company**) with the **Insurer's** prior written consent (which shall not be unreasonably delayed or withheld). **Defence Costs** shall also include premium paid for insurance instruments or bonds which are required in order to institute an appeal but without any obligation to furnish or procure such insurance instruments or bonds.

3.6 **Independent Contractor** means a natural person working for a **Company**, pursuant to an express contract between them and who is not an employee of a **Company**.

3.7 **Insured Person** means a natural person who has been, now is or shall become a director, officer, employee (whether permanent, temporary, full-time, part-time, leased or seasonal) or volunteer of a **Company**. **Insured Person** does not include external auditors of a **Company** and does not include any liquidator, receiver, administrator, supervisor or other insolvency office-holder of a **Company** or of a **Company's** assets.

At the request of a **Company**, **Insured Person** shall include an **Independent Contractor**, provided:

- (a) that an **Independent Contractor** shall only be covered under this EPL Section in respect of **Claims** arising out of their position as a person working for that **Company**; and
- (b) that, with respect to each **Claim** which that **Company** wishes an **Independent Contractor** to be covered for, that **Company**:
  - (i) makes its request in writing to the **Insurer** within 30 days after the **Claim** is first made; and
  - (ii) within that 30 days, agrees in writing to indemnify the **Independent Contractor** against all **Loss** on account of that **Claim**.

3.8 **Labour Relations** means:

- (a) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities;
- (b) the duty or obligation to notify, meet, discuss with, consult with or bargain with any employee or employee representative, collectively or otherwise;
- (c) collectively bargained agreements; or
- (d) strikes, work stoppages, boycotts, picketing, lockouts or other industrial action.

3.9 **Limit of Liability** means the amount stated in Item 3.3 of the Schedule.

3.10 **Loss** means the amount which an **Insured** is legally obligated to pay on account of a **Claim** including:

- (a) **Defence Costs**;
- (b) awards of damages (including punitive, exemplary, liquidated or aggravated damages and the multiple portion of any multiplied damages award), judgments, pre- and post- judgment interest, awards of claimant's costs and sums payable pursuant to any settlements;
- (c) **Attendance Compensation**; or
- (d) **Crisis Costs; Public Relations Expenses; Reputational Protection Expenses.**

**Loss** does not include:

- (ii) any matter which it is not permissible to insure or is uninsurable under applicable laws;
- (iii) fines or penalties;
- (iv) any amount not indemnified by a **Company** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;

- (v) the future salary or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, judgment in, or other resolution of, a **Claim**;
  - (vi) **Stock Benefits** or bonuses;
  - (vii) damages, compensation, salary, wages, commissions or sums:
    - a. which are severance payments;
    - b. which are in respect of a notice period;
    - c. which are determined to be owing under a written contract of employment;
    - d. which are determined to be owing under an express written obligation to make payments in the event of the termination of employment; or
    - e. which represent any amount the **Insured** would have been liable for in the absence of a **Wrongful Act**;
  - (viii) taxes or sums payable in relation to taxes;
  - (ix) any form of non-monetary or injunctive relief including but not limited to the costs of making or refusing to make accommodations or modifications for any disabled person in respect of working practices, premises, property or otherwise, and the costs incurred in holding or refusing to hold any employment-related educational programmes, except as provided in Extension 2.5 of this EPL Section;
  - (x) amounts which represent the cost of complying with or refusing to comply with any judgment or order for the reinstatement or re-engagement of an employee except, in the event of the **Company** being ordered to reinstate or re-engage an employee, **Loss** shall include the cost of paying wages (but not **Benefits**) to such employee for the period from the date of the dismissal or termination to the date on which the court or tribunal of first instance delivered its judgment to the parties; or
  - (xi) amounts which represent any amount the **Insured** would have been liable for in the absence of a **Wrongful Act** including but not limited to severance payments, payments in respect of notice periods, payments owing under the National Minimum Wage Act 2000 or any equivalent wage provisions, payments owing under a written contract of employment or payments owing under any other express written obligations.
- 3.11 **Personal Injury** means bodily injury, sickness, disease, mental illness, death, mental anguish, emotional distress or humiliation of any natural person (but not mental anguish, emotional distress or humiliation resulting from any **Wrongful Act**).
- 3.12 **Public Relations Expenses** means the reasonable fees and related expenses incurred by an **Insured** in hiring a public relations firm or consultant, crisis management firm, or law firm, with the prior written consent of the **Insurer** (not to be unreasonably delayed or withheld), in order to prevent or limit the effects of negative publicity which it is anticipated may arise from a **Claim**. The sub-limit is the amount specified in Item 6.1 of the Schedule.
- 3.13 **Potential Claim** means a complaint or allegation of a **Wrongful Act** by or on behalf of a potential claimant which:
- (a) does not constitute a **Claim**, but may subsequently give rise to a **Claim**; and
  - (b) is lodged with a **Company's** human resources department or other comparable department.
- 3.14 **Reputation Protection Expenses** means the reasonable fees and related expenses incurred by an **Insured** in hiring a public relations firm or consultant, with the prior written consent of the **Insurer** (not to be unreasonably delayed or withheld), in order to disseminate a **Final Adjudication** of a **Claim** in favour of such **Insured**. The sub-limit is the amount specified in Item 6.1 of the Schedule.
- 3.15 **Retaliation** means retaliatory treatment against a director, officer, employee, volunteer or **Independent Contractor** of a **Company** on account of such person:
- (a) exercising their rights in law;
  - (b) refusing to breach any law;
  - (c) opposing any unlawful practice;
  - (d) disclosing, or threatening to disclose, an alleged breach of law to a superior or to any governmental agency; or
  - (e) assisting in, testifying in or cooperating with a proceeding or investigation regarding an alleged breach of law.

3.16 **Single Claim** means all **Claims** or other matters giving rise to a claim under this EPL Section in connection with the same originating source or cause or the same underlying source or cause, regardless of whether such matters involve the same or different claimants, **Insureds**, events or legal causes of action. A **Single Claim** shall in any event include all **Claims** or other matters giving rise to a claim under this EPL Section that relate to or are in any way connected with, or contribute to the insolvency of a **Company**.

3.17 **Stock Benefits** means:

- (a) any offering, plan or agreement between a **Company** and any employee which grants stock, stock warrants or stock options of a **Company** to that employee, including, but not limited to, grants of stock options, grants of restricted stock, grants of stock warrants, grants of performance stock shares and any other compensation or incentive granted in the form of securities of a **Company**; or
- (b) any payment or instrument, the amount or value of which is derived from the value of securities of a **Company**, including, but not limited to, stock appreciation rights and phantom stock plans or arrangements.

**Stock Benefits** does not include employee stock ownership plans or employee stock purchase plans.

3.18 **Wages and Hours** means:

- (a) the amount, calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other reward;
- (b) the classification of employees for wage or hours of work purposes;
- (c) withholdings or other deductions from wages;
- (d) rights to leave or absence from work or rights to pay during such absence;
- (e) child labour; or
- (f) pay equity or comparable worth.

3.19 **Wrongful Act** means any employment-related:

- (a) wrongful or unfair dismissal, discharge or termination of employment (including constructive dismissal), breach of any written, oral or implied employment contract or breach of any quasi-employment contract;
- (b) sexual harassment (including unwelcome sexual advances, requests for sexual favours or other verbal, visual or physical conduct of a sexual nature) that is made a condition of employment with, used as a basis of employment decisions by, interferes with performance in, or creates an intimidating, hostile or offensive working environment within, a **Company**;
- (c) workplace harassment (including work related harassment or bullying of a non-sexual nature) that interferes with performance in, or creates an intimidating, hostile or offensive working environment within, a **Company**;
- (d) breach of employment discrimination laws, including wrongful limitation, segregation or classification of, or failure to employ, employees or applicants for employment in any way that would deprive such persons of employment opportunities or otherwise adversely affect their status as employees because of such persons' race, colour, religion, age, sex, national origin, disability, veteran status, pregnancy, genetics, sexual orientation, sexual preference, obesity, marital status, HIV status or other status that is protected pursuant to any law in any jurisdiction;
- (e) wrongful employment decision which is any wrongful demotion, denial of tenure or failure or refusal to promote;
- (f) negligent evaluation, wrongful discipline, negligent reference, defamation (including libel and slander), invasion of privacy, breach of confidentiality or malicious falsehood;
- (g) **Retaliation**;
- (h) failure to provide or consistently enforce employment-related corporate policies and procedures which is alleged as part of a **Claim** alleging any employment-related matter described in (a) to (g) above;
- (i) negligent retention, supervision, hiring or training which is alleged as part of a **Claim** alleging any employment-related matter described in (a) to (g) immediately above; or
- (j) negligent or intentional misrepresentation, false imprisonment, or wrongful infliction of emotional distress, mental anguish or humiliation, which is alleged as part of a **Claim** alleging any employment-related matter described in (a) to (g) immediately above,

committed, attempted, or allegedly committed or attempted by:

- (ii) a **Company**; or

(iii) an **Insured Person** in their capacity as such.

## 4. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** under this EPL Section:

- 4.1 based upon, arising from or attributable to any **Wrongful Act** or a series of related **Wrongful Acts** in any **Claim** or circumstance of which written notice has been accepted under any policy which this EPL Section renews, replaces or follows in whole or in part;
- 4.2 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** commenced before the date stated in Item 6.4 of the Schedule;
- 4.3 based upon, arising from or attributable to a breach of any law, duty or trust by an **Insured** in their 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 (but this exclusion shall not apply to a **Claim** seeking remedy for **Retaliation**);
- 4.4 based upon, arising from or attributable to any deliberately dishonest or deliberately fraudulent act or omission or any intentional breach of law by a **Company**. This Exclusion shall only apply if
  - (a) it is established through a judgment or any other **Final Adjudication** or any admission by such **Company** that the relevant conduct occurred; and
  - (b) for the purposes of this exclusion the employment-related **Wrongful Act** of a **Company** shall not be imputed to any other **Company**;
- 4.5 based upon, arising from or attributable to any actual or alleged breach of a legal obligation to obtain or maintain insurance or of any legal obligation relating to any state or legally required sickness, healthcare, disability, pension, benefit, social security or national insurance system (but this exclusion shall not apply to a **Claim** seeking remedy for **Retaliation**);
- 4.6 based upon, arising from or attributable to the liability of another person assumed by an **Insured** under any contract or agreement except to the extent that that **Insured** would have been liable in the absence of such contract or agreement, and except for **Defence Costs** up to 10% of the **Limit of Liability** stated in Item 3.3 of the Schedule;
- 4.7 based upon, arising from or attributable to any actual or alleged breach of any law (except the UK Equality Act 2010, The Equal Pay Act (Northern Ireland) 1970, or the Employment Equality Acts 1998-2015) or duty relating to **Wages and Hours** or health and safety at work (but this exclusion shall not apply to a **Claim** seeking remedy for **Retaliation**);
- 4.8 based upon, arising from or attributable to any actual or alleged breach of any law or duty relating to **Labour Relations**;
- 4.9 based upon, arising from or attributable to a **Claim** which:
  - (a) is seeking remedy for breach of any law or duty relating to collective redundancy procedures or requirements, or
  - (b) is seeking remedy for breach of any law or duty relating to non-collective redundancy procedures where the breach is deliberate or reckless,but this exclusion shall not apply to a **Claim** seeking remedy for **Retaliation**;
- 4.10 based upon, arising from or attributable to a **Claim** for the violation of the responsibilities, obligations or duties imposed by any law or amendments to or regulations promulgated under any such law that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, mass lay-off, or any similar obligation (but this exclusion shall not apply to a **Claim** seeking remedy for **Retaliation**);
- 4.11 for **Personal Injury** or **Property Damage**;
- 4.12 based upon, arising from or attributable to legal action or litigation brought in a court of law constituted in the **USA**, or arising out of the activities of the **Company** in the **USA**; or
- 4.13 based upon, arising from or attributable to a breach of an express contract between an **Independent Contractor** and a **Company**.

## 5. Conditions

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### Duty of Disclosure and Severability

- 5.1 The **Insured** has a duty to answer all questions posed by the **Insurer** honestly and with reasonable care. The **Insurer** shall have no remedy for any breach, by an **Insured**, of its duty of disclosure prior to inception of, or in connection with, this EPL Section, unless the **Insurer** demonstrates:
- (a) the **Insured**, in answering the **Insurer's** questions, provided information which the **Insured** knew was false or misleading;
  - (b) the **Insured** consciously disregarded whether, in answering the **Insurer's** questions, information which the **Insured** provided was false or misleading; or
  - (c) any conduct (relative to the contract or the steps leading to its formation) by the **Insured** involves fraud of any other kind.
- 5.2 With respect to this EPL Section, the **Presentation** shall be construed as a separate presentation by each **Insured**, and the knowledge of one **Insured Person** shall not be imputed to any other **Insured Person** with respect to statements and information in the **Presentation**.
- 5.3 In respect of cover provided to a **Company** in this EPL Section, the knowledge of any of the head of human resources, chief executive or head of the legal department shall be imputed to it with respect to statements and information in the **Presentation**.

### Extended Reporting Period

- 5.4 Should the **Insurer**, other than for non-payment of premium, or the **Policyholder**, not renew this EPL Section and it is not replaced by an equivalent employment practices' insurance policy, the **Insured** may elect to obtain an extended reporting period of 1 year for 100% of the EPL Section annual premium, provided that:
- (a) written notice of such election and payment of the additional premium are received by the **Insurer** within 60 days following the expiry of the **Policy Period**;
  - (b) such extended reporting period shall commence from the expiry date of the **Policy Period** and shall apply only to **Wrongful Acts** prior to that date;
  - (c) such non-renewal was not as a result of a **Transaction**; and
  - (d) if, during such extended reporting period, any **Company** takes out an equivalent employment practices' liability policy, the extended reporting period shall then come to an end.
- 5.5 A **Claim** first made during the extended reporting period shall be deemed to have been first made during the **Policy Period**.

### Limits of Liability

- 5.6 The **Insurer's** maximum aggregate liability for all **Loss** under this EPL Section arising from a **Single Claim**, irrespective of the number of claims made, the amount claimed, the number of **Insureds** who claim under this EPL Section, or when during the **Policy Period** such claims are made, shall not exceed the **Limit of Liability**.
- 5.7 Notwithstanding the above, the **Insurer's** maximum liability for **Loss** in respect of which a sub-limit is specified shall be the amount specified in the Schedule and shall apply irrespective of the number of claims made under this EPL Section, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made. Sub-limits are part of and not in addition to the maximum liability of the **Insurer** referred to above.

### Retention

- 5.8 The Retention amounts stated in Item 6.2 of the Schedule shall apply to each and every **Single Claim**. The Retention shall be uninsured and borne by the **Company**, including where a **Claim** is made solely against an **Insured Person**. The **Insurer's** liability shall apply only to **Loss** which is in excess of the Retention.
- 5.9 Where different Retentions under this EPL Section apply to a **Single Claim**, the highest Retention amount shall be applied once.
- 5.10 If a **Claim** which is a **Class or Mass Action** ceases to be a **Class or Mass Action**, the Retention applicable to it shall change accordingly, but the **Insurer** shall not be liable to reimburse any amount of the Retention originally borne by the

**Insured** while the **Claim** was a **Class or Mass Action**. If a **Claim** which is not a **Class or Mass Action** becomes a **Class or Mass Action**, the Retention applicable to it shall change accordingly.

### **Related Claims and Matters**

- 5.11 A **Single Claim** shall attach to this EPL Section only if the notice of the first **Claim** or other matter giving rise to a claim under this EPL Section that became **Single Claim** was given by the **Insured** during the **Policy Period**.

### **Other Insurance**

- 5.12 If an **Insured** would (but for the existence of this EPL Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this EPL Section) in respect of a **Claim**, the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this EPL Section) under any other such insurance policy.

### **Defence and Settlement**

- 5.13 The **Insurer** shall have the right, but not the duty, to defend **Claims** and to appoint lawyers for that purpose.
- 5.14 The **Insured** shall not settle or offer to settle any **Claim**, incur any **Loss** or otherwise assume any contractual obligation or admit any liability with respect to a **Claim** without the **Insurer's** prior written consent, (which shall not be unreasonably delayed or withheld).
- 5.15 The **Insured** shall not prejudice the **Insurer's** interests nor its potential or actual rights of recovery, and shall provide to the **Insurer** such information and co-operation as the **Insurer** may reasonably require.
- 5.16 Any dispute or difference between the **Insurer** and an **Insured** as to whether a **Claim** should be settled, or the amount, shall be submitted to a barrister specialising in employment practice liability, having been called to the Bar of Ireland at least ten years prior to such submission. The choice of barrister shall be by agreement between the parties or, in the absence of such agreement, by the Chairman of the Council of the Bar of Ireland.
- The appointed barrister shall provide a written opinion which shall be binding upon the parties. The costs of obtaining the opinion shall be borne by the **Insurer**.
- 5.17 The **Insurer** shall advance covered **Defence Costs** under this EPL Section. Such advanced sums shall be repaid to the **Insurer** by the relevant **Insured** in the event it is later established the **Insured** was in fact not covered for them.

## Section 5: Benefit Plan Liability (“this BPL Section”)

### 1. Insuring Clauses

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#### **Pension Trustee Liability**

1.1 The **Insurer** shall pay, on behalf of each **Insured**, **Loss** other than **Overpayments**.

#### **Contribution Notices**

1.2 The **Insurer** shall pay, on behalf of each **Insured Person**, **Contribution Notice Amounts** arising from that **Insured Person’s Wrongful Act**.

#### **Exoneration and Overpayments**

1.3 The **Insurer** shall pay, to each **Benefit Plan**, **Overpayments**

#### **Investigation Costs**

1.4 The **Insurer** shall pay, on behalf of each **Insured**, **Investigation Costs**.

#### **Loss of Documents**

1.5 The **Insurer** shall pay, on behalf of each **Insured**, the reasonable costs and expenses of replacing or restoring **Documents** whose loss, damage or destruction is first discovered by that **Insured** during the **Policy Period**.

#### **Subpoenas**

1.6 The **Insurer** shall pay, on behalf of each **Insured Person**, **Subpoena Costs**.

### 2. Extensions

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#### **Limit of Liability Each Single Claim**

2.1 A separate **Limit of Liability** shall apply in respect of all **Loss** arising from each **Single Claim**, subject to the conditions of this BPL Section

#### **New Plans**

2.2 If, during the **Policy Period**, an **Employer** establishes or starts to **Maintain** a plan, programme, trust or scheme to provide benefits of the nature described in the definition of **Benefit Plan** to employees (and provided that such plan, programme, trust or scheme is not established or **Maintained** in whole or in part in the **USA**), then that plan, programme, trust or scheme (the plan, programme, trust or scheme as a **Benefit Plan**) and its individuals set out in the **Insured Person** Definition 3.19, shall automatically become **Insureds** under this BPL Section, with effect from the time that that **Employer** establishes or starts to **Maintain** that plan, programme, trust or scheme but only with respect to **Wrongful Acts** after, and (as concerns **Investigations**) conduct after, that time.

However, if such plan, programme, trust or scheme has total assets which exceed 20% of the combined total assets of all **Benefit Plans** covered at the start of the **Policy Period**, then:

- (a) for it and its individuals set out in the **Insured Person** Definition 3.19 to become **Insureds** under this BPL Section, the **Policyholder** shall give written notice of that establishment or start, and such information as the **Insurer** may reasonably require, to the **Insurer** within 60 days following that establishment or start, whereupon they shall become **Insureds** with effect from the date of that establishment or start, but only with respect to **Wrongful Acts** after, and (as concerns **Investigations**) conduct after, that establishment or start; and

- (b) the **Insurer** shall have the right to amend the terms of this BPL Section, including charging an additional premium and including terminating cover for that plan, programme, trust or scheme and its individuals set out in the **Insured Person Definition** 3.19, but only with effect from 60 days after that establishment or start.

The **Insurer** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Insurer** may require and subject to any additional premium and amended terms and conditions.

## Acquisition or Creation of Another Company

2.3 If, during the **Policy Period**, an **Employer**:

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

then:

- (ii) that entity and its individuals set out in the **Insured Person** Definition 3.19 shall automatically become **Insureds** (the entity as an **Employer**);
- (iii) such plans, programmes, trusts and schemes which are **Maintained** by that entity at the time of such acquisition or creation to provide benefits of the nature described in the definition of **Benefit Plan** to its employees and which are not established or **Maintained** in whole or in part in the **USA**, and individuals set out in the **Insured Person** Definition 3.19 of such plans, programmes, trusts and schemes, shall automatically become **Insureds** (the plans, programmes, trusts and schemes as **Benefit Plans**); and
- (iv) such companies as are incorporated for the sole purpose of either administering a plan, programme, trust or scheme described in (ii) above or of acting as a trustee of such plan, programme, trust or scheme and are subsidiaries of that entity, and the individuals set out in the **Insured Person** Definition 3.19 of such entities, shall automatically become **Insureds** (the companies as **Corporate Trustees**),

under this BPL Section 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.

However, if the plans, programmes, trusts and schemes described in (ii) above have total assets which exceed 25% of the combined total assets of all **Benefit Plans** covered at the start of the **Policy Period**, then:

- (i) for the entities, plans, programmes, trusts, schemes and companies mentioned in (i) to (iii) above and their individuals set out in the **Insured Person** Definition 3.19 to become **Insureds** under this BPL Section, the **Policyholder** shall give written notice of that acquisition or creation, and such information as the **Insurer** may require, to the **Insurer** within 60 days following that acquisition or creation, whereupon they shall become **Insureds** with effect from the date of that acquisition or creation, but only with respect to **Wrongful Acts** after, and (as concerns **Investigations**) conduct after, that acquisition or creation; and
- (ii) the **Insurer** shall have the right to amend the terms of this BPL Section, including charging an additional premium and including terminating cover for those entities, plans, programmes, trusts, schemes and companies and their individuals set out in the **Insured Person** Definition 3.19, but only with effect from 60 days after that 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 and subject to any additional premium and amended terms and conditions.

## Winding Up of a Benefit Plan

2.4 If an **Employer** starts to wind up a **Benefit Plan** before the expiry of the **Policy Period**, there will nonetheless be cover with respect to that **Benefit Plan** until the end of the **Policy Period** for **Wrongful Acts** and conduct before the expiry of the **Policy Period**.

## Bail Bond, Prosecution, Extradition Crisis, Media and Relative Costs

2.5 **Loss** includes, for the purposes of Insuring Clause 1.1, **Bail Bond Costs, Prosecution Costs, Extradition Crisis Costs, Media Costs** and **Relative Costs**.

## Emergency Costs

- 2.6 If it is not possible for the **Insured** to obtain the **Insurer's** prior written consent to the incurring of **Defence Costs**, **Investigation Costs**, or **Other Insured Costs**, the **Insurer** will waive the requirement for prior written consent, as long as the **Insurer's** consent is sought within thirty days of the first of such costs being incurred.

## Automatic Enrolment Obligations

- 2.7 **Wrongful Act** is extended to include any actual or alleged failure by an **Insured** in their **Automatic Enrolment Insured Capacity** to comply with any duty (other than a duty to make contributions to a pension scheme) imposed by the **Automatic Enrolment Provisions**.

## Stakeholder Pension Obligations

- 2.8 **Wrongful Act** is extended to include any actual or alleged failure by an **Insured** in their **Stakeholder Insured Capacity**:
- (a) to provide an **Employer's** employee with access to a **Stakeholder Pension Scheme**;
  - (b) to collect contributions of an **Employer's** employee to a **Stakeholder Pension Scheme**; or
  - (c) to pay contributions of an **Employer's** employee into a **Stakeholder Pension Scheme**.

## Missing Beneficiaries

- 2.9 **Wrongful Act** includes a wrongful act or omission, error, misstatement, misleading statement, neglect, maladministration, breach of duty or breach of trust committed, attempted, or allegedly committed or attempted, by an **Insured** in their **Insured Capacity** to or against a missing beneficiary of a **Benefit Plan**.

## Compensation for Court Attendance and Staff Disruption

- 2.10 With regard to each **Claim**, the **Insurer** shall pay, on behalf of each **Insured**, **Attendance Compensation**. The **Insurer** shall pay the compensation to the **Policyholder**. Compensation provided for by this Extension 2.10 in respect of a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a **Claim**.

## Mitigation Loss

- 2.11 This BPL Section is extended to cover, as **Loss**, the **Mitigation Loss** of an **Insured Person**, for which cover would be granted under Insuring Clauses 1.1, 1.2 or 1.3 in the event of a **Claim**, provided that :
- (a) the **Insured Person** demonstrates, to the reasonable satisfaction of the **Insurer**, that the incurring of such **Mitigation Loss** is reasonable and proportionate, and is reasonably likely to prevent or mitigate the potential **Claim**;
  - (b) the circumstances giving rise to the need for payment of such **Mitigation Loss** are reported in accordance with General Section Clause 8;
  - (c) any action taken is with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed);
  - (d) the liability of the **Insurer** shall in no event exceed the amount of covered **Loss** it would have paid if a **Claim** were made against the **Insured Person**; and
  - (e) the burden of proving that a **Claim** would be covered under this D&O Section shall rest with the **Insured Person**.

This Extension shall not apply to any potential **Claim** against an **Insured Person** by the **Company**, and shall be subject to the sub-limit of EUR 250,000 or 10% of the Limit of Liability, whichever is the lesser.

## 3. Definitions

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When used in bold type in this BPL Section:

- 3.1 **Authority** means the Republic of Ireland Pensions Authority, **Determinations Panel**, Pensions Ombudsman, Deputy Pensions Ombudsman, Financial Services Authority, Financial Services Ombudsman or any other ombudsman or regulator in any jurisdiction (other than the **USA**) of plans, programmes, trusts or schemes which provide benefits to employees of

the following nature: pension, superannuation, profit-sharing, employee share ownership, education, training, medical or unemployment.

3.2 **Automatic Enrolment Insured Capacity** means performance or discharge of the functions, duties and responsibilities of an **Insured** under the **Automatic Enrolment Provisions**.

3.3 **Automatic Enrolment Provisions** means:

- (a) Sections 2 to 9 of the UK Pensions Act 2008 or Part X of the Irish Pensions Act 1990; and
- (b) all regulations made under Section 10 or 11 of the UK Pensions Act 2008 (or equivalent in any jurisdiction).

3.4 **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**.

The sub-limit is the amount specified in Item 7.1 of the Schedule.

3.5 **Benefit Plan** means any plan, programme, trust or scheme which has been, now is or shall become established or **Maintained** by an **Employer** to provide benefits to any **Employer's** employees of the following nature: pension, superannuation, profit-sharing, employee share ownership, education, training, medical or unemployment.

**Benefit Plan** does not include any plan, programme, trust or scheme which:

- (a) is established or **Maintained** for employees of companies, unconnected to each other, in a particular activity sector or geographical sector; or
- (b) is established or **Maintained** in whole or in part in the **USA**, including, but not limited to, any plan, programme, trust or scheme which is subject to regulation under Title 1 of the Employee Retirement Income Security Act 1974 (of the **USA**) or any amendment or re-enactment thereof or which qualifies under Section 401 of the Internal Revenue Code 1986 (of the **USA**) or any amendment or re-enactment thereof.

3.6 **Claim** means the following first commenced during the **Policy Period**:

- (a) for the purposes of Insuring Clauses 1.1, 1.2 and 1.3:
  - (i) a written demand for specific monetary compensation or specific non-pecuniary relief;
  - (ii) a civil proceeding (including third party proceeding, counterclaim or arbitration 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 or under a **Regulatory Procedure**,  
made against an **Insured** for a **Wrongful Act**;
- (b) for the purposes of Insuring Clause 1.4, an **Investigation**;

Solely where referred to in the Exclusions and Conditions, unless expressly provided otherwise, **Claim** also means an **Investigation** and a **Subpoena**.

3.7 **Constructive Trustee** means a natural person not expressly appointed as a trustee of a **Benefit Plan** but who, for reasons other than improper behaviour, is treated in law as a trustee of that **Benefit Plan**.

3.8 **Contribution Notice Amount** means that part of **Loss** consisting of an amount payable by an **Insured Person** pursuant to, or for breach of, a contribution notice issued by the **Regulator** in a **Claim** (as defined in **Claim** definition 3.6(a)) first made during the **Policy Period** against that **Insured Person**.

3.9 **Corporate Trustee** means a company incorporated for the sole purpose of administering a **Benefit Plan** or of acting as a **Benefit Plan** trustee and which is a **Subsidiary** of the **Policyholder**.

3.10 **Defence Costs** means reasonable and necessary costs, expenses, charges and fees incurred by the **Insured** with the **Insurer's** prior written consent (not to be unreasonably delayed or withheld) in direct response to a **Claim** (as defined in **Claim** Definition 3.6(a)), other than internal corporate costs and expenses of a **Company**. **Defence Costs** shall also include:

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

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

- 3.11 **Determinations Panel** means the Determinations Panel established by the **Regulator**.
- 3.12 **Documents** means documents (other than bearer bonds, coupons, shares, bank notes, currency notes, stamps and other negotiable instruments), whether in physical or electronic format, relating to a **Benefit Plan**, which belong to a **Company** or for which an **Insured** is legally responsible.
- 3.13 **Employer** means a **Company** which is the **Policyholder** or a **Subsidiary**.
- 3.14 **Exoneration** means the relieving of an **Insured Person** from liability, which would otherwise have attached to that **Insured Person**, by operation of a clause in a **Benefit Plan**'s trust deed or rules.
- 3.15 **Express Trustee** means a natural person trustee, by express appointment, of a **Benefit Plan**.
- 3.16 **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**.

The sub-limit is the amount specified in Item 7.3 of the Schedule.

- 3.17 **Indemnifiable** means, disregarding all restrictions:
- (a) in contract;
  - (b) in an **Employer**'s or **Corporate Trustee**'s constitution, memorandum or articles of association, bylaws, shareholder resolutions, or board or other governing body resolutions; or
  - (c) in a **Benefit Plan**'s trust deed, rules or trustee resolutions,
- not prevented by law or insolvency from being indemnified or reimbursed by a **Company**.
- 3.18 **Insured Capacity** means performance or discharge of the functions, duties and responsibilities of an **Insured** in connection with the guardianship, administration, maintenance or operation of a **Benefit Plan**.
- 3.19 **Insured Person** means a natural person who has been, now is or shall become:
- (a) an **Express Trustee**;
  - (b) a director, officer or committee member of a **Company**;
  - (c) an employee of a **Company**, including such employee who has been, now is or shall become a **Benefit Plan**'s administrator or manager or an internal dispute decision-maker; or
  - (d) a **Constructive Trustee**.

**Insured Person** does not include external auditors of a **Company** and does not include any liquidator, receiver, administrator, supervisor or other insolvency office-holder of a **Company** or a **Company**'s assets.

- 3.20 **Investigation** means a formal investigative inquiry or formal fact-finding investigation by an **Authority** into the conduct, in its **Insured Capacity**, of an **Insured**.
- 3.21 **Investigation Costs** means that part of **Loss** which consists of reasonable legal representation fees and related professional charges which an **Insured** incurs in its representation at an **Investigation**:
- (a) which is first made during the **Policy Period**; and
  - (b) at which the attendance of that **Insured** is required by the **Authority** conducting that **Investigation**,
- but which are only incurred after that **Insured** has been notified in writing by that **Authority** that it is looking into whether or not that **Insured** is culpable of misconduct.
- 3.22 **Limit of Liability** means the amount stated in Item 3 of the Schedule.
- 3.23 **Loss** means:
- (a) for the purposes of Insuring Clause 1.1, the amount which an **Insured** is legally obligated to pay on account of a **Claim** including:

- (i) **Defence Costs;**
- (ii) awards of damages (including by any **Authority**), 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** or the **Claim** giving rise to the damages or multiple portion has a substantial relationship);
- (iii) non-criminal fines and penalties imposed by the Pensions Authority, **Determinations Panel**, Pensions Ombudsman or Deputy Pensions Ombudsman, provided that the premium for this cover is not paid or reimbursed from the assets of a **Benefit Plan**;
- (iv) **Prosecution Costs;**
- (v) **Extradition Crisis Costs;**
- (vi) **Media Costs;** or
- (vii) **Relative Costs,**

but not including any amount payable pursuant to, or for breach of, a contribution notice or financial support direction issued by the **Regulator** or any amount payable by a **Company** pursuant to, or for breach of, an order or direction issued by any **Authority** which, in the absence of that order or direction, a **Company** would have been liable to pay anyway by way of contribution, funding or financial support to a **Benefit Plan**;

- (b) for the purposes of Insuring Clause 1.2, **Contribution Notice Amounts;**
- (c) for the purposes of Insuring Clause 1.3, **Overpayments;**
- (d) for the purposes of Insuring Clause 1.4, **Investigation Costs;**
- (e) for the purposes of Insuring Clause 1.5, the reasonable costs and expenses of replacing or restoring **Documents;**
- (f) for the purposes of Insuring Clause 1.6, **Subpoena Costs;** or
- (g) **Attendance Compensation.**

**Loss** does not include:

- (ii) any matter which it is not permissible to insure or is uninsurable under applicable law;
- (iii) fines or penalties (other than those described in (a)(iii) of this Definition 3.23);
- (iv) costs or expenses incurred by an **Insured** of compliance with any order for, or agreement to provide, injunctive or non-pecuniary relief;
- (v) any amount for which liability arises from breach of any **USA** law or regulation; or
- (vi) taxes or damages reflecting taxes (other than such taxes or damages for which an **Insured Person** is not **Indemnifiable** and for which he or she is liable on account of a **Claim** against him or her seeking to make him or her personally liable for non-payment of taxes due from an **Company**).

**Maintain** means:

- (a) participate in;
- (b) contribute to;
- (c) be obliged to contribute to;
- (d) guarantee contributions to;
- (e) be responsible for; or
- (f) sponsor.

3.24 **Media Costs** means:

- (a) reasonable costs, expenses, charges and fees, incurred with the prior written consent of the **Policyholder**, of an independent public relations consultant engaged to advise an **Insured Person** directly in connection with the extradition proceedings part of a **Claim** first made during the **Policy Period**;
- (b) reasonable costs, expenses, charges and fees of an independent public relations consultant or crisis management consultant which are incurred by an **Company** for making a public communication with respect to, or for preventing or minimising business disruption and adverse publicity resulting from, a **Claim** (as defined in (a) in the definition of

**Claim**) first made during the **Policy Period** and are incurred during the first 180 days following the giving of written notice of that **Claim** to the **Insurer** pursuant to General Section 8; or

- (c) reasonable costs, expenses, charges and fees of an independent public relations consultant employed by an **Insured** to reduce the damage caused to that **Insured's** reputation by a **Claim** (as defined in (a) in the definition of **Claim**) first made during the **Policy Period** against that **Insured** by publishing the results of that **Claim** in the event that it has ended in a final non-appealable judgment and there has been no finding of liability, or of any wrongful act or omission, error, misstatement, misleading statement, neglect or breach of duty, on the part of that **Insured**.

The sub-limit is the amount specified in Item 7.4 of the Schedule.

**3.25 Mitigation Loss** means settlement, costs and expenses incurred as a result of action taken by the **Insured Person** or the **Company** solely to prevent or mitigate a potential **Claim** against an **Insured Person** which if it were to become a **Claim** would give rise to a covered **Loss** under this BPL Section.

**3.26 Other Insured Costs** means **Prosecution Costs, Extradition Crisis Costs, Media Costs, Relative Costs and Subpoena Costs**.

**3.27 Overpayments** means benefits:

- (a) which a **Benefit Plan** has paid or become liable to pay as a result of an **Insured Person's Wrongful Act** in respect of a **Claim** (as defined in (**Claim** Definition 3.6(a)) against that **Insured Person**;
- (b) which, in the absence of any **Wrongful Act**, that **Benefit Plan** would not have paid or become liable to pay; and
- (c) for which that **Insured Person**, solely as a result of **Exoneration**, is not liable to that **Benefit Plan**.

**3.28 Personal Injury** means bodily injury, sickness, disease, mental illness or death of any natural person.

**3.29 Prosecution 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**.

The sub-limit is the amount specified in Item 7.2 of the Schedule.

**3.30 Regulator** means the Pensions Authority.

**3.31 Relative** means a parent, spouse, civil partner (as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010), son or daughter of an **Insured Person**.

**3.32 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 (not more) **Relative** of that **Insured Person** at the hearing of a **Claim** (as defined in **Claim** Definition 3.6(a)) if the hearing takes place in a country where that **Insured Person** is not resident.

The sub-limit is the amount specified in Item 7.5 of the Schedule.

**3.33 Retired Insured Persons** means:

- (a) **Express Trustees**;
- (b) **Constructive Trustees**; or
- (c) natural person directors, officers or committee members of a **Corporate Trustee**,

who have ceased to act in their **Insured Capacity** prior to the expiry of the **Policy Period** for reasons:

- (ii) other than sanction by an **Authority** or disqualification, on grounds relating to fitness or propriety, from holding office;
- (iii) other than a **Transaction**; or

(iv) other than insolvency of a **Company**.

- 3.34 **Single Claim** means all **Claims** or other matters giving rise to a claim under this BPL Section in connection with the same originating source or cause or the same underlying source or cause, regardless of whether such matters involve the same or different claimants, **Insureds**, events or legal causes of action. A **Single Claim** shall in any event, include all **Claims** or other matters giving rise to a claim under this BPL Section that relate to or are in any way connected with, or contribute to the insolvency of a **Company** or **Benefit Plan**.
- 3.35 **Stakeholder Insured Capacity** means performance or discharge of the functions, duties and responsibilities of an **Insured** in connection with an **Employer's** legal obligations to provide its employees with access to a **Stakeholder Pension Scheme**.
- 3.36 **Stakeholder Pension Scheme** means a pension scheme which is a stakeholder pension scheme for the purposes of Part 1 of the Welfare Reform and Pensions Act 1999 or equivalent in any jurisdiction.
- 3.37 **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** (as defined in **Claim** Definition 3.6(a)), **Loss** (as defined in **Loss** Definition 3.23(a)) on account of which is covered by this Policy.
- 3.38 **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**.
- Subpoena Costs** does not include internal corporate costs or expenses.
- 3.39 **Regulatory Procedure** means:
- (a) the standard or special procedure of the **Regulator** or the **Determinations Panel**; or
  - (b) any other regulatory procedure of the **Regulator** or the **Determinations Panel** which in the future replaces, or is created in addition to, the standard or special procedure.
- 3.40 **Wrongful Act** means any wrongful act or omission, error, misstatement, misleading statement, neglect, maladministration, breach of duty or breach of trust committed, attempted, or allegedly committed or attempted, by an **Insured** in their **Insured Capacity**, and also has the meanings provided for in Extensions 2.7 and 2.8.

## 4. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** under this BPL Section:

- 4.1 based upon, arising from or attributable to any **Wrongful Act** or a series of related **Wrongful Acts** in any **Claim** or circumstance of which written notice has been accepted under any policy which this BPL Section renews, replaces or follows in whole or in part;
- 4.2 based upon, arising from or attributable to, or derived from substantially the same facts or circumstances alleged in, any pending or prior proceedings of any nature against any **Insured** commenced before the date stated in Item 7.8 of the Schedule;
- 4.3 for **Personal Injury** or **Property Damage**;
- 4.4 as a result of a **Claim** brought and maintained, in whole or in part, in the **USA** based upon, arising from or in consequence of **Pollution**;
- 4.5 as a result of a **Claim** brought and maintained entirely outside the **USA** for **Pollution** (but this exclusion shall not apply to **Defence Costs**);
- 4.6 based upon, arising from or attributable to any deliberate fraudulent act or omission or any intentional breach of law by such **Insured**, if there is a **Final Adjudication** of such fraud or breach;

- 4.7 based upon, arising from or attributable to such **Insured** having gained any profit, remuneration or advantage to which such **Insured** was not legally entitled, if there is a **Final Adjudication** of such gain;
- 4.8 to the extent that such **Loss** constitutes benefits due or to become due under the terms of a **Benefit Plan** (or damages reflecting such benefits) or benefits which would be or become due under the terms of a **Benefit Plan** if that **Benefit Plan** complied with all applicable law (or damages reflecting such benefits):
- (a) except **Overpayments**; or
  - (b) except to the extent that such **Loss** is payable by an **Insured Person** as a personal obligation as a result of that **Insured Person's Wrongful Act**;
- 4.9 based upon, arising from or attributable to any failure to fund or pay a debt to a **Benefit Plan** or any failure to collect, pay or pass on employer, employee or member contributions to a **Benefit Plan**, unless and to the extent that such **Loss** is payable by an **Insured Person** as a personal obligation as a result of that **Insured Person's Wrongful Act** (but this exclusion shall not apply to **Defence Costs**);
- 4.10 based upon, arising from or attributable to the liability of others assumed by an **Insured** under any contract (but this exclusion shall not apply to the extent that:
- (a) that **Insured** would have been liable in the absence of that contract; or
  - (b) the liability was assumed in accordance with the trust deed or rules of a **Benefit Plan**.

## 5. Conditions

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### Existing Benefit Plans

- 5.1 With respect to each **Benefit Plan**, the **Insureds** shall be covered under this BPL Section only for **Wrongful Acts**, and (as concerns **Investigations**) conduct, at a time when any **Company** which **Maintains** that **Benefit Plan** is a **Subsidiary** or is the **Policyholder**.

### Duty of Disclosure and Severability

- 5.2 The **Insured** has a duty to answer all questions posed by the **Insurer** honestly and with reasonable care. The **Insurer** shall have no remedy for any breach, by an **Insured**, of its duty of disclosure prior to inception of, or in connection with, this BPL Section, unless the **Insurer** demonstrates:
- (a) the **Insured**, in answering the **Insurer's** questions, provided information which the **Insured** knew was false or misleading;
  - (b) the **Insured** consciously disregarded whether, in answering the **Insurer's** questions, information which the **Insured** provided was false or misleading; or
  - (c) any conduct (relative to the contract or the steps leading to its formation) by the **Insured** involves fraud of any other kind.
- 5.3 With respect to this BPL Section the **Presentation** shall be construed as a separate presentation by each **Insured**, and the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person** with respect to statements and information in the **Presentation**. Further, with respect to the application of any exclusion, no conduct of any **Insured Person** shall be imputed to any other **Insured Person**.
- 5.4 With respect to the **Presentation**, and application of any exclusion, only conduct or knowledge of any past, present or future director, company secretary, head of the legal department, head of the human resources department, head of the risk management department, **Express Trustee** or **Constructive Trustee** of a **Company** shall be imputed to that **Company**.

### Extended Reporting Period

- 5.5 Should the **Insurer**, other than for non-payment of premium, or the **Policyholder**, not renew this BPL Section and it is not replaced by an equivalent benefit plan or pension scheme liability insurance policy:
- (a) the **Insured** may elect to obtain an extended reporting period of 1 year for 100% of the BPL Section annual premium, provided that:

- (i) written notice of such election and payment of the additional premium are received by the **Insurer** within 60 days following the expiry of the **Policy Period**;
  - (ii) such extended reporting period shall commence from the expiry date of the **Policy Period** and shall apply only to **Wrongful Acts** or conduct prior to that date;
  - (iii) such non-renewal was not as a result of a **Transaction**; and
  - (iv) if, during such extended reporting period, any **Company** takes out an equivalent benefit plan or pension scheme' liability policy, the extended reporting period shall then come to an end, unless within 60 days following expiry of the **Policy Period**, the extended reporting period referred to under paragraph (b) immediately below is obtained.
- (b) the **Retired Insured Persons** shall obtain an extended reporting period of 12 years; 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**.
- 5.6 A **Claim** first made during the extended reporting period shall be deemed to have been first made during the **Policy Period**.

### Limits of Liability

- 5.7 The **Insurer's** maximum aggregate liability for all **Loss** under this BPL Section arising from a **Single Claim**, irrespective of the number of claims made, the amount claimed, the number of **Insureds** who claim under this BPL Section, or when during the **Policy Period** such claims are made, shall not exceed the **Limit of Liability**.
- 5.8 The **Insurer's** maximum liability for all costs and expenses of replacing or restoring **Documents** on account of all occasions of loss, damage or destruction shall not exceed the sub-limit stated in Item 7.6 of the Schedule.
- 5.9 Notwithstanding Clause 5.7 above, the **Insurer's** maximum liability for **Loss** in respect of which a sub-limit is specified, shall be the amount specified in the Schedule and shall apply irrespective of the number of claims made under this BPL Section, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made. Sub-limits are part of and not in addition to the maximum liability of the **Insurer** referred to above.

### Retention

- 5.10 The Retention amount stated in Item 7.7 of the Schedule shall apply to each and every **Claim**. The Retention shall be uninsured and borne by the **Company**, including where a **Claim** is made solely against an **Insured Person**. The **Insurer's** liability shall apply only to **Loss** which is in excess of the Retention.
- 5.11 If an **Insured Person** is **Indemnifiable** by a **Company** for a covered **Loss** and such **Company** does not indemnify that **Loss**, the **Insurer** will pay it on behalf of the **Insured Person** without applying the Retention. However, the Retention amount shall then be reimbursed by the **Policyholder** to the **Insurer**.

### Related Claims and Matters

- 5.12 A **Single Claim** shall attach to this BPL Section only if the notice of the first **Claim** or other matter giving rise to a claim under this BPL Section that became **Single Claim** was given by the **Insured** during the **Policy Period**.

### Other Insurance

- 5.13 If an **Insured** would (but for the existence of this BPL Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this BPL Section or any sub-limit) in respect of an insured event, the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this BPL Section) under any other such insurance policy.

### Defence and Settlement

- 5.14 The **Insurer** shall have the right, but not the duty, to defend **Claims** and appoint lawyers for that purpose.

- 5.15 The **Insured** shall not settle or offer to settle any **Claim**, incur any **Loss** or otherwise assume any contractual obligation or admit any liability with respect to a **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably delayed or withheld.
- 5.16 The **Insured** shall not prejudice the **Insurer's** interests or its potential or actual rights of recovery, and shall provide to the **Insurer** such information and co-operation as the **Insurer** may reasonably require.
- 5.17 The **Insurer** shall advance covered **Defence Costs, Investigation Costs** and any other costs which constitute **Loss** under this BPL Section, including **Indemnifiable** amounts which a **Company** does not advance. Such advanced sums shall be repaid to the **Insurer** by the relevant **Insured** in the event it is later established the **Insured** was in fact not covered for them.

SPECIMEN

## Section 6: Employee Crime (“this EC Section”)

### 1. Insuring Clauses

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#### **Crime**

- 1.1 The **Insurer** shall pay **Financial Loss** sustained by a **Company** and resulting from a **Crime**, first **Discovered** during the **Policy Period**.

#### **Expenses**

- 1.2 The **Insurer** shall pay **Expenses** incurred by a **Company** and resulting from a **Crime**, first **Discovered** during the **Policy Period**.

### 2. Extensions

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#### **Prior Subsidiaries**

- 2.1 Should an entity have ceased, within the two years prior to the start of the **Policy Period**, to be a **Subsidiary**, there shall nonetheless be cover under this EC Section for such entity:
- (a) if, at the time of such cessation, there was in force an earlier crime policy issued by the **Insurer** to the **Policyholder**; and
  - (b) there shall be no cover for **Crimes** occurring after the date of that cessation.

#### **Acquisition or Creation of Another Company**

- 2.2 If, during the **Policy Period**, a **Company**:
- (a) acquires securities or voting rights in another entity which as a result of such acquisition becomes a **Subsidiary**;
  - (b) creates an entity which as a result of such creation becomes a **Subsidiary**; or
  - (c) acquires any entity by merger into or consolidation with that **Company**,
- that entity shall automatically become a **Company** under this EC Section with effect from the date of such acquisition or creation but shall not have cover for **Crimes** occurring before such acquisition or creation.
- However, if such acquired or created entity:
- (ii) has an amount of employees that increases the amount of employees of all **Companies** together by more than 25%;  
or
  - (iii) has an amount of turnover that increases the amount of turnover of all **Companies** together by more than 20% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**,
- the **Policyholder** shall give written notice of such acquisition or creation to the **Insurer** as soon as practicable and also such information as the **Insurer** may require. The **Insurer** shall have the right to amend the terms of this Policy including charging an additional premium.

#### **Social Engineering Fraud**

- 2.3 This EC Section is extended to include, as a **Crime, Funds Transfer Fraud**, as set out in Definition 3.14 (a)(ii) and (b), up to the sub-limit of EUR 25,000

### 3. Definitions

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When used in bold type in this EC Section:

- 3.1 **Computer Fraud** means the criminal taking of **Money, Securities** or **Merchandise** resulting from **Hacking**.

3.2 **Crime** means:

- (a) the criminal taking by an **Employee**, acting alone or in collusion with others, of **Money**, **Securities** or **Property** to the deprivation of a **Company**;
- (b) **Funds Transfer Fraud**; or
- (c) **Computer Fraud** by a **Third Party**.

3.3 **Client** means a customer of an **Insured** to whom goods or services are provided by an **Insured** under written contract or for a fee.

3.4 **Computer System** means computer hardware, software, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities.

3.5 **Data** means information contained in a manuscript, record, account, microfilm, tape, disk, flash memory or other record, whether or not contained in a computer or its facilities.

3.6 **Discovered** means learned of, and **Discovery** means the learning of, by a director, officer or **Insurance Representative** of a **Company** that there has been a **Crime**, including but not limited to a **Crime**:

- (a) which occurred prior to the **Policy Period**;
- (b) which results in **Loss** totalling less than the Retention stated in Item 8.3 of the Schedule; or
- (c) where the exact amount and details of the **Financial Loss** are unknown.

The time when a director, officer or **Insurance Representative** of a **Company** first suspects that there may have been a **Crime** shall be deemed to be the time when that director, officer or **Insurance Representative** learns of that **Crime**.

3.7 **Employee** means a natural person:

- (a) who:
  - (i) is in the regular service of a **Company** in the ordinary course of its business, whether temporary, permanent, full-time, part-time or seasonal;
  - (ii) is governed and directed by, and reporting directly to, a **Company** in the performance of such service; and
  - (iii) is compensated by a **Company** through salary, wages or commissions or is a volunteer, student, secondee or intern; or
- (b) who is a member of the board of directors, board of trustees or equivalent management board of a **Company**.

3.8 **Employee Benefit Plan** means a pension scheme, benefit plan or programme established, maintained or sponsored solely by a **Company** for the benefit of its employees.

3.9 **Expenses** means:

- (a) reasonable expenses, other than a **Company's** internal corporate costs and expenses, incurred by a **Company** with the **Insurer's** prior written consent:
  - (i) to establish the existence and amount of any covered **Financial Loss** payable by the **Insurer** in excess of the Retention stated in Item 8.3 of the Schedule; or
  - (ii) to repair or replace to a substantially similar standard a safe or vault damaged as a result of a **Crime**;
- (b) in the event of **Forgery** or alteration of a **Financial Instrument**, reasonable court costs and lawyers' fees incurred and paid with the **Insurer's** prior written consent in defending a **Company's** bank in any legal proceeding brought against it to enforce payment of that **Financial Instrument**;
- (c) in respect of **Money** lost as a result of a **Crime** and covered by this EC Section, interest on that **Money** for the period between when the **Crime** occurred and when it was first **Discovered**, calculated at the London Inter Bank Offer Rate as published in The Financial Times on the date the **Crime** was first **Discovered**; or
- (d) reasonable expenses, other than a **Company's** internal corporate costs and expenses, incurred by a **Company** with the **Insurer's** prior written consent to reproduce or reconstitute **Data**.

3.10 **Fake Person** means a person purporting or claiming to be, or impersonating:

- (a) an **Employee** authorised to instruct other **Employees** to transfer, pay or deliver **Money** or **Securities**;

(b) a **Vendor**; or

(c) a **Client**,

but who is not such **Employee, Vendor or Client**.

3.11 **Financial Instrument** means a cheque, draft or similar written promise, order or direction to pay a sum certain in money, that is made, drawn by or drawn upon a **Company** or by anyone acting as a **Company's** agent, or that is purported to have been so made or drawn.

3.12 **Financial Loss** means direct financial loss.

3.13 **Forgery** means the signing by hand of another natural person's name with the intent to deceive, but does not mean the signing of one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated as hand-written signatures.

3.14 **Funds Transfer Fraud** means

(a) fraudulent written, electronic, or telephone instructions to transfer, pay or deliver **Money or Securities** from any account maintained by a **Company**:

(i) issued by a **Third Party** to a financial institution; or

(ii) issued by a **Fake Person** to an **Employee**;

(b) a **Third Party** deceiving an Employee into providing any security detail for operating or having access to an account held by an **Insured** with a financial institution.

3.15 **Hacking** means the unauthorised access to the **Company's Computer System**.

3.16 **Insurance Representative** means an **Employee** designated to represent a **Company** for the purpose of effecting and maintaining insurance.

3.17 **Limit of Liability** means the amount stated in Item 3.5 of the Schedule

3.18 **Loss** means **Financial Loss and Expenses**.

3.19 **Merchandise** means a **Company's** inventory, raw materials, work in progress and any products manufactured or distributed by a **Company**.

3.20 **Money** means currency, coin, bank notes, bullion or electronic funds.

3.21 **Property** means tangible property other than **Money and Securities**.

3.22 **Securities** means negotiable and non-negotiable instruments or contracts representing either **Money** or other property.

3.23 **Third Party** means a person other than a **Company** or an **Employee**.

3.24 **Vendor** means a person that provides, or has provided, goods or services to the **Company** under a legitimate pre-existing arrangement or written agreement.

## 4. Exclusions

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The **Insurer** shall not be liable for:

4.1 **Loss** resulting from the loss of trade secrets, confidential processing methods or other confidential information of any kind;

4.2 **Loss** resulting from **Crime** committed by any person controlling at any time more than 10% of the issued share capital of a **Company** (but, if that **Loss** would, but for this exclusion, be covered by this EC Section, then the **Insurer** shall pay so much of that **Loss** as exceeds the value of that person's shareholding on the day immediately preceding the date of **Discovery** of the **Crime**);

4.3 **Loss** sustained by one **Company** to the advantage of any other **Company**;

4.4 **Loss** resulting from declared or undeclared war, civil war, insurrection, riot, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalisation;

- 4.5 interest (except **Expenses**), gains, profits or other income;
- 4.6 consequential loss of any kind except for **Expenses**;
- 4.7 **Loss** resulting from any **Crime** committed by an **Employee** after a director, officer or **Insurance Representative** of a **Company** acquires knowledge of:
- (a) **Crime**, fraud or dishonesty by that **Employee** whilst employed by a **Company**; or
  - (b) fraud or dishonesty committed by that **Employee** when not employed by a **Company** and involving any assets worth EUR 15,000 or more.
- 4.8 **Loss** resulting from extortion.
- 4.9 **Loss** resulting directly or indirectly from any authorised or unauthorised trading of **Money**, **Securities** or **Property**, whether or not in the name of a **Company** and whether in a genuine or fictitious account (but this exclusion shall not apply to that amount of **Financial Loss** which constitutes the amount of improper personal financial gain thereby accruing to an **Employee** - improper personal financial gain does not include salary, commissions, fees, or other emoluments, including but not limited to promotions and raises, paid by a **Company** to that **Employee**).
- 4.10 **Loss** resulting from **Crime** committed by any person who is an agent or representative of an **Company** and to whom a **Company** has entrusted **Money**, **Securities** or **Property** or has given the means to access a **Company's Money**, **Securities** or **Property**.
- 4.11 **Expenses**:
- (a) to reproduce **Data** recorded on magnetic media, optical media or flash memory, unless there is an analysis file, specification or backup of that **Data** held somewhere other than any of the premises occupied by the **Companies** in conducting their businesses;
  - (b) to reconstitute **Data**, if a **Company** knowingly uses illegal or unlicensed copies of programmes;
  - (c) to render information usable by replacement processing equipment;
  - (d) to design, update or improve software or programmes or to optimise their operation or performance; or
  - (e) resulting from an alteration in **Data** held on magnetic media, optical media or flash memory due to their incorrect use, the effect of magnetic fields or the obsolescence of a computer or its facilities.
- 4.12 **Loss** for which cover is available under Section 3 Corporate Legal Liability, Extension 2.5 (Identity Fraud Costs).

## 5. Conditions

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### Insolvency

- 5.1 (a) If, during the **Policy Period**, the **Policyholder** enters into winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or if a receiver or holder of a similar position is appointed over any of its assets, cover for the **Companies** under this EC Section shall continue until the end of the **Policy Period**, but not for **Crimes** occurring after the date of that entry or appointment.
- (b) If, during the **Policy Period**, a **Subsidiary** enters into winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or if a receiver or holder of a similar position is appointed over any of its assets, cover for that **Subsidiary** under this EC Section shall continue until the end of the **Policy Period**, but not for **Crimes** occurring after the date of such entry or appointment.

### Extended Discovery Period

- 5.2 (a) Should the **Insurer**, other than for non-payment of premium, or the **Policyholder**, not renew this EC Section and it is not replaced by an equivalent employee crime insurance policy, the **Insured** shall automatically obtain an extended discovery period of 90 days, provided that:
- (i) such extended discovery period shall commence from the expiry date of the **Policy Period** and shall only apply to **Crimes** committed prior to that date;
  - (ii) the non-renewal was not as a result of a **Transaction**;

- (iii) a **Company** other than the **Policyholder** that, during the **Policy Period**, entered into winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or if a receiver or holder of a similar position is appointed over any of its assets shall not be entitled to an extended discovery period; and
  - (iv) if, during an extended discovery period any **Insured** takes out any other insurance policy which affords employee crime cover, the extended discovery period shall then come to an end.
- (b) A **Crime** first **Discovered** during an extended discovery period shall be deemed to have been first **Discovered** during the **Policy Period**.

## Connected Crimes

5.3 All **Crimes** resulting from a single act or any number of acts in which the same person is concerned or implicated, shall be deemed to be a single **Crime** which shall attach to this EC Section only if the first such **Crime** was **Discovered** during the **Policy Period**.

## Limits of Liability

5.4 In respect of each single **Crime**:

- (a) the liability of the **Insurer** for all **Loss** on account of that **Crime** shall be limited to the **Loss** Limit each **Crime** stated in Item 8.1 of the Schedule; and
- (b) the liability of the **Insurer** under Insuring Clause 1.2 shall be limited to the **Expenses** Limit each **Crime** stated in Item 8.2 of the Schedule, which limit is part of, and not in addition to, the **Loss** Limit each **Crime** stated in Item 8.1 of the Schedule.

However, the **Insurer's** maximum aggregate liability for all **Loss** under this EC Section, irrespective of the number of **Crimes** first **Discovered**, the amounts of **Loss** claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made shall not exceed the **Limit of Liability** in Item 3.5 of the Schedule.

The **Company's** maximum liability for all **Crimes** first **Discovered** during the **Policy Period** in respect of which a sub-limit is specified in the definition of **Crime** shall be the maximum liability for each **Policy Period**. Sub-limits are part of and not in addition to the maximum liability of the **Company**.

## Retention

5.5 In respect of each single **Crime**:

- (a) the Retention amount stated in Item 8.3 of the Schedule shall apply and be borne by the **Company**;
- (b) the **Insurer** shall only be liable for that amount of **Loss** which exceeds the total of:
  - (i) the Retention; and
  - (ii) the amount of recoveries made prior to the **Insurer** making payment; and
- (c) if a **Company** receives payment under another policy or bond after application of a retention for **Loss** also covered by this EC Section, the Retention shall, in respect of that **Crime**, be reduced by that retention applied under the other policy or bond.

## Other Insurance

5.6 If an **Insured** would (but for the existence of this EC Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this EC Section or any sub-limit) in respect of a **Crime**, the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this EC Section) under any other such insurance policy.

## Valuation

5.7 For the purposes of establishing the amounts of **Financial Loss** payable by the **Insurer**, the following shall apply for valuation:

- (a) for **Securities**, the least of:

- (i) the closing price of the **Securities** on the business day immediately preceding the day on which the **Crime** is first **Discovered**;
- (ii) the cost of replacing the **Securities**; or
- (iii) the cost to post a lost instrument bond (which cost the **Insurer** shall pay on behalf of the **Company**);
- (b) for paper, microfilm, tapes, disks, computers and other material or means for storing information, the cost of such material or means as if blank and not the value of whatever is recorded therein;
- (c) for **Property**, the lesser of:
  - (i) the price paid by a **Company** for the **Property**; and
  - (ii) the cash value of the **Property** at the time the **Crime** is first **Discovered**; or
- (d) for foreign currency, the Euro value of that currency based on the rate of exchange published in The Financial Times on the day the **Crime** is first **Discovered**.

## Recoveries

- 5.8 For the purposes of this EC Section, recoveries (whether effected by the **Insurer** or by a **Company**), less the cost of recovery, shall be distributed as follows:
- (a) first, to the **Policyholder** for the amount of **Loss** otherwise covered but in excess of the **Limit of Liability**;
  - (b) second, to the **Insurer** for the amount paid to the **Policyholder** for covered **Loss**;
  - (c) third, to the **Policyholder** for the Retention amount; and
  - (d) fourth, to the **Policyholder** for **Loss** specifically excluded by this EC Section.

For the purposes of this Condition 5.8, a recovery from any reinsurance of, or indemnity to, the **Insurer** shall not be regarded as a recovery.

## Policyholder and the Position of Companies

- 5.9 Only the **Policyholder** can:
- (a) give notice of a **Crime** or provide proof of loss in accordance with General Section clause 9; or
  - (b) make a claim under this EC Section or adjust, receive or enforce payment of any **Loss**.

Regardless of which **Company** sustains or incurs **Loss**, the **Insurer** shall only be obliged to pay **Loss** to the **Policyholder**, although the **Insurer** may elect to pay to the **Company** which sustains or incurs the **Loss**.

Each **Company** is deemed for all purposes of this EC Section to be insured jointly and not separately for their several interests.

# Section 7: Kidnap and Extortion Expenses (“this KEE Section”)

## 1. Insuring Clause

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- 1.1 The **Insurer** shall reimburse the **Policyholder** for **Expenses** paid by a **Company** resulting directly from a **Kidnapping, Hijacking, Wrongful Detention, Extortion, Cyber Extortion** or **Political Threat** which commences during the **Policy Period**.

## 2. Definitions

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When used in bold type in this KEE Section:

- 2.1 **Computer System** means computer hardware, software, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities.
- 2.2 **Cyber Extortion** means a threat made solely and directly against a **Company** by a person or group to:
- (a) alter, damage, destroy or render unusable any **Data** owned by that **Company** or for which that **Company** is legally liable; or
  - (b) disseminate, divulge or utilise a **Record**;
- by the unauthorised input into a **Computer System of Instructions**, where:
- (ii) that person or group has obtained, or claims to have obtained, unauthorised access to the **Company’s Computer System** and is demanding payment in exchange for the mitigation or removal of such threat; and
  - (iii) the **Company** has conducted a reasonable investigation and reasonably determined that such threat is technologically credible.
- 2.3 **Data** means information, concepts or instructions processed and stored in the **Company’s Computer System**.
- 2.4 **Employee** means a natural person who:
- (a) is in the regular service of a **Company** in the ordinary course of its business, whether temporary, permanent, full-time, part-time or seasonal;
  - (b) is governed by, directed by, and reporting directly to, a **Company** in the performance of such service; and
  - (c) is compensated by a **Company** through salary, wages or commissions or is a volunteer, student, secondee or intern.
- Employee** also includes a natural person who is an **Executive**, but such person shall only be an **Employee** at such times when that person is performing acts within the scope of the usual duties of an **Employee**.
- Employee** does not include any person, other than an unpaid volunteer, student, secondee or intern, who is not on a **Company’s** payroll.
- 2.5 **Executive** means any natural person who is:
- (a) a duly elected officer or appointed member of the board of directors, board of trustees or equivalent governing board of a **Company**; or
  - (b) an in-house general counsel of a **Company**.
- Executive** does not include external auditors of a **Company** and does not include any liquidator, receiver, administrator, supervisor or other insolvency office-holder of a **Company** or of a **Company’s** assets.
- 2.6 **Expenses** means:
- (a) the reasonable cost of any of the following incurred in connection with an **Insured Event** (but excluding the cost of (v), (vi) and (vii) of the following where incurred solely in connection with **Cyber Extortion**):
    - (i) a negotiator or consultant who is independent of the **Insured**;
    - (ii) a public relations consultant who is independent of the **Insured**;
    - (iii) travel and accommodation of an **Insured Person**;

- (iv) legal advice (but not advice or representation for defending against a claim) from a person who is independent of the **Insured**;
  - (v) security guard services for up to fifteen days from a person who is independent of the **Insureds** (provided that, with respect to such services incurred in connection with any **Political Threat**, the **Company** shall bear uninsured and at its own risk 25% of the cost of such services, and the **Insurer** shall only be liable for the remaining 75% of the cost of such services);
  - (vi) advertising, communications and recording equipment;
  - (vii) a forensic analyst who is independent of the **Insured**;
  - (viii) assessment of the **Extortion** or **Political Threat** by a security consultant who is independent of the **Insured**;
  - (ix) assessment of the **Cyber Extortion** by a computer network security consultant who is independent of the **Insured**;
  - (x) interest on a loan taken out by a **Company** to obtain money or property to be surrendered as ransom as a result of the **Kidnapping, Extortion** or **Cyber Extortion**;
  - (xi) a reward paid by a **Company** to a natural person who provides information not otherwise available leading to the arrest and conviction of any person responsible for the **Kidnapping, Hijacking, Wrongful Detention, Extortion** or **Cyber Extortion**;
  - (xii) the salary, wages, bonuses, commissions, health benefits, welfare benefits and pension benefits which a **Company** continues to pay an **Employee** from the time the **Kidnapping, Hijacking** or **Wrongful Detention** of that **Employee** starts until expiry of thirty days after that **Employee** is released or dies or, if earlier, expiry of sixty months after the **Kidnapping, Hijacking** or **Wrongful Detention** began (but only to the extent of the rate of salary etc. that that **Employee** was entitled to at the start of the **Kidnapping, Hijacking** or **Wrongful Detention**);
  - (xiii) the salary, wages, bonuses, commissions, health benefits, welfare payments and pension benefits which a **Company** pays a newly hired natural person to do the work of an **Employee** following the **Kidnapping, Hijacking** or **Wrongful Detention** of that **Employee** from the time the **Kidnapping, Hijacking** or **Wrongful Detention** starts until expiry of thirty days after that **Employee** is released or dies or, if earlier, expiry of sixty months after the **Kidnapping, Hijacking** or **Wrongful Detention** began (but only to the extent of the rate of salary etc. that that **Employee** was entitled to at the start of the **Kidnapping, Hijacking** or **Wrongful Detention**);
  - (xiv) pecuniary loss which an **Insured Person** sustains as the result of that **Insured Person's** inability to attend to personal financial matters solely because of the **Kidnapping, Hijacking** or **Wrongful Detention** of that **Insured Person**;
  - (xv) medical, cosmetic, psychiatric or dental treatment of an **Insured Person** necessitated by the **Kidnapping, Hijacking** or **Wrongful Detention** of that **Insured Person**; or
  - (xvi) up to thirty days' rest and rehabilitation, including meals and recreation, taken within twelve months following an **Insured Person's** release;
- (b) **Recall Expenses**; or
- (c) other reasonable expenses (but not ransom) incurred by a **Company** with the **Insurer's** prior written consent.

2.7 **Extortion** means a threat made solely and directly against a **Company** by a person or group to:

- (a) commit a **Kidnapping** of, do bodily harm to, or wrongfully abduct or detain any **Insured Person**;
- (b) damage or destroy any tangible property owned or leased by a **Company**;
- (c) damage or destroy any tangible property for which a **Company** is legally liable and which is located on the **Premises**;
- (d) contaminate any product manufactured or distributed by a **Company**;
- (e) to make known to persons outside all **Companies** that a product manufactured or distributed by a **Company** has been contaminated or is the subject of a threat to contaminate it; or
- (f) disseminate, divulge or utilise any **Proprietary Information**,

where that person or group is demanding payment in exchange for the mitigation or removal of such threat.

- 2.8 **Hijacking** means the unlawful detention, other than a **Kidnapping**, of an **Insured Person** by violence or threat of violence by a person or group, where such unlawful detention:
- (a) commences while that **Insured Person** is travelling in an aircraft, watercraft or motor vehicle and lasts for more than four hours; or
  - (b) commences while that **Insured Person** is travelling in an aircraft or watercraft and results in that **Insured Person** dying.
- 2.9 **Instructions** means an ordered set of coded information that, when executed by a **Computer System**, causes such **Computer System** to process **Data** or perform one or more operations.
- 2.10 **Insured Event** means any or all of **Kidnapping**, **Hijacking**, **Wrongful Detention**, **Extortion**, **Cyber Extortion**, and **Political Threat**, depending on the context.
- 2.11 **Insured Person** means a natural person who is:
- (a) an **Employee**;
  - (b) a **Relative**;
  - (c) physically at the home of an **Employee** as a person employed in that **Employee's** household;
  - (d) physically at the home of an **Employee** as a guest or residing there with the consent of that **Employee**;
  - (e) physically on the **Premises** of a **Company** as a guest or customer;
  - (f) travelling in an aircraft, watercraft or motor vehicle with an **Employee** and as a customer or guest of a **Company**; or
  - (g) temporarily retained by a **Company** to deliver money or property as ransom.
- 2.12 **Kidnapping** means:
- (a) a wrongful abduction and detention of an **Insured Person**, against their will or by deception, by a person or group demanding payment by a **Company** in exchange for the release of that **Insured Person**; or
  - (b) a claim by a person or group demanding such a payment, to have carried out such a wrongful abduction and detention.
- 2.13 **Limit of Liability** means the amount stated in Item 3.6 of the Schedule
- 2.14 **Political Threat** means a politically motivated threat made solely and directly against a **Company**, to do bodily harm to an **Employee** or a **Relative**, by a person or group:
- (a) acting as agent of, or with tacit approval of, any government or governmental entity; or
  - (b) acting, or purporting to act, on behalf of any political terrorist or insurgent group.
- 2.15 **Premises** means buildings or locations occupied by an **Company** in conducting its business.
- 2.16 **Proprietary Information** means confidential information of a **Company**, unique to its business, and which is protected by physical or electronic control or other reasonable efforts to prevent it being disclosed.
- 2.17 **Recall Expenses** means:
- (a) reasonable transportation expenses; or
  - (b) other reasonable expenses for which the **Insurer** has given prior written consent;
- incurred by a **Company** in the withdrawal, physical inspection or destruction of products manufactured or distributed by that **Company** which are the subject of a threat to contaminate, but excluding:
- (ii) refunds for, the value of, or the cost of replacing such products; or
  - (iii) expenses which, even in the absence of such threat, would be, or would need to be, incurred in such withdrawal, physical inspection or destruction because of a known or suspected defect or lack of quality or because of any other reason.
- 2.18 **Record** means a **Company's** information about its relationship with a customer which is not publicly available and is stored in an electronic medium, provided that such information is protected by electronic control to prevent it being disclosed.

- 2.19 **Relative** means a person who is, in relation to an **Employee**, a **Spouse**, sibling, ancestor, **Spouse's** ancestor, lineal descendant or lineal descendant's **Spouse**. Lineal descendants include adopted children, foster children and stepchildren. Ancestors include adoptive parents and stepparents.
- 2.20 **Spouse** means spouse, civil partner (as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) or domestic partner.
- 2.21 **Wrongful Detention** means the wrongful detention, other than a **Kidnapping** or **Hijacking**, of an **Insured Person** against their will by a person or group for a period of at least six hours.

### 3. Exclusions

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The **Insurer** shall not be liable:

- 3.1 to reimburse **Expenses** where the **Kidnapping, Hijacking, Wrongful Detention, Extortion, Cyber Extortion**, or **Political Threat** concerned involves any fraudulent, dishonest or criminal act of an identifiable **Employee** or where the **Expenses** involve any fraudulent, dishonest or criminal act of an identifiable **Employee**;
- 3.2 to reimburse **Expenses** where an **Insured Person** suspected or believed by a **Company** to be the subject of a **Kidnapping, Hijacking, Wrongful Detention, Extortion**, or **Political Threat** has acted fraudulently, whether alone or in collusion with others, and the **Company** has not, prior to the incurring of **Expenses**, made reasonable efforts to determine that such **Kidnapping, Hijacking, Wrongful Detention, Extortion** or **Political Threat** is genuine;
- 3.3 to reimburse loss of income not realised as the result of a **Kidnapping, Hijacking, Wrongful Detention, Extortion, Cyber Extortion**, or **Political Threat**;
- 3.4 to reimburse **Expenses** arising from **Wrongful Detention** or **Political Threat** which is due to:
- (a) any violation by an **Insured** of the law of the country where the **Wrongful Detention** takes place or of the country by or on behalf of whose government or governmental entity the **Political Threat** is made; or
  - (b) failure of an **Insured** to procure or maintain proper immigration, work, residence or similar visas, permits or other documentation;
- 3.5 to reimburse any loss sustained by one **Insured** to the advantage of any other **Insured**.

### 4. Conditions

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#### Deemed Death

- 4.1 For the purposes of all references in this KEE Section to an **Insured Person** dying, an **Insured Person** who is the victim of a **Kidnapping, Hijacking** or **Wrongful Detention** shall be deemed to have died in the event that there is no communication from that **Insured Person** or those responsible for the **Kidnapping, Hijacking** or **Wrongful Detention** for a period of two years following the latest of:
- (a) the **Kidnapping, Hijacking** or **Wrongful Detention**;
  - (b) the last communication from that **Insured Person**; and
  - (c) the last communication from those responsible for the **Kidnapping, Hijacking** or **Wrongful Detention**.

The time of death shall be deemed to be the end of that two-year period.

#### Limits of Liability

- 4.2 The **Insurer's** maximum aggregate liability for all **Expenses** under this KEE Section, irrespective of the number of claims made, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** claims are made, shall not exceed the **Limit of Liability**.
- 4.3 The **Insurer's** maximum liability for **Recall Expenses** shall not exceed the sub-limit stated in Item 9.1 of the Schedule;
- 4.4 The **Insurer's** maximum liability for all costs of rest and rehabilitation (as described in **Expenses** Definition 2.6(a)(xvi)) arising out of **Kidnappings, Hijackings** and **Wrongful Detentions** shall not exceed the sub-limit stated in Item 9.2 of the Schedule;

- 4.5 Notwithstanding Clause 4.2 above, the **Insurer's** maximum liability for **Expenses** in respect of which a sub-limit is specified, shall be the amount specified in the Schedule and shall apply irrespective of the number of claims made under this KEE Section, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made. Sub-limits are part of and not in addition to the maximum liability of the **Insurer** referred to above.

## Retention

- 4.6 The Retention amount stated in Item 9.3 of the Schedule shall apply to each and every **Insured Event**. The Retention shall be uninsured and borne by the **Company**. The **Insurer's** liability shall apply only to **Expenses** which are in excess of the Retention.

## Related Threats

- 4.7 In relation to **Extortion, Cyber Extortion** and **Political Threat**, all threats:
- (a) related by a common committed, attempted or threatened act;
  - (b) made contemporaneously against or with regard to the same **Insured**, or involving the same **Data, Record, Instructions, Premises, or Proprietary Information** as the case may be; or
  - (c) made by the same person or group,
- shall be deemed to be a single **Insured Event** which shall attach to this KEE Section only if the first such threat was made during the **Policy Period**.

## Insured Person's Own Assets

- 4.8 If, with regard to a **Kidnapping** or **Extortion**, the person or group perpetrating the **Kidnapping** or **Extortion** makes a demand for payment direct to an **Insured Person** rather than to a **Company**, then, upon the **Policyholder's** request by written notice to the **Insurer**, **Expenses** incurred by or on behalf of that **Insured Person** and which are described in **Expenses** Definition 2.6(a)(i) to (viii), (x), (xi) or (xiv) to (xvi) shall be deemed to be incurred by a **Company**.
- 4.9 The **Insurer's** liability under this KEE Section for **Expenses**:
- (a) which are deemed pursuant to this Clause 4.9 to be incurred by a **Company**; and
  - (b) which were incurred by or on behalf of an **Insured Person** other than an **Employee**,
- shall be reduced by amounts paid on account of such **Expenses** under any other policy issued by Chubb or any other subsidiary, affiliate or associate of Chubb Ltd.

## Acquisition or Creation of Another Company

- 4.10 If, during the **Policy Period**, a **Company**:
- (a) acquires securities or voting rights in another entity which as a result of such acquisition becomes a **Subsidiary**;
  - (b) creates an entity which as a result of such creation becomes a **Subsidiary**; or
  - (c) acquires any entity by merger into or consolidation with that **Company**,
- that entity shall automatically become a **Company** under this KEE Section with effect from the date of such acquisition or creation but only with respect to **Insured Events** which commence after such acquisition or creation.
- However, if such acquired or created entity:
- (ii) has gross consolidated assets that increase the total consolidated assets of all the **Companies** together by more than 25% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**; or
  - 3. has a turnover that increases the total turnover of all the **Companies** together by more than 10% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**,

the **Policyholder** shall give written notice of such acquisition or creation to the **Insurer** as soon as practicable and also such information as the **Insurer** may require. The **Insurer** shall have the right to amend the terms of this KEE Section including charging an additional premium.

## Expenses in Foreign Currency and Contracting

- 4.11 **Expenses** incurred in a currency other than Euros shall be converted to and paid in Euros based upon the rate of exchange published in the Irish Times on the date those **Expenses** are incurred.
- 4.12 Where **Expenses** relate to goods or services, the **Company** shall contract with, and pay, the supplier direct for those goods or services. The **Insurer's** duty is limited to reimbursing afterwards, up to the **Limit of Liability**.

## Recoveries

- 4.13 Recoveries (whether effected by the **Insurer** or by an **Insured**), less the cost of recovery, shall be distributed as follows:
- (a) first, to the **Policyholder** for the amount of **Expenses** otherwise covered but in excess of the **Limit of Liability**;
  - (b) second, to the **Insurer** for the amount paid to the **Policyholder** for covered **Expenses**;
  - (c) third, to the **Policyholder** for the applicable Retention;
  - (d) fourth, to the **Policyholder** for **Expenses** specifically excluded by this KEE Section.

For the purposes of this Condition 4.13, a recovery from reinsurance of, or indemnity to, the **Insurer** shall not be regarded as a recovery.

## Other Insurance

- 4.14 If an **Insured** would (but for the existence of this KEE Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this KEE Section or any sub-limit) in respect of an **Insured Event**, the **Insurer** shall not be liable for **Expenses** other than in excess of any amount that is or would have been payable (but for the existence of this KEE Section) under any other such insurance policy.

## Section 8: Cyber Liability & Incident Response Expenses ("this Cyber Section")

### 1. Insuring Clauses

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#### Privacy Liability and Incident Response Expenses

- 1.1 The **Insurer** will pay **Damages** and **Privacy Claims Expenses**, by reason of a **Privacy Claim** first made during the **Policy Period** by reason of any **Privacy Wrongful Act**, taking place prior to the end of the **Policy Period** and reported to the **Insurer** pursuant to the General Section Clause 11.

#### Network Security Liability and Incident Response Expenses

- 1.2 The **Insurer** will pay **Damages** and **Network Security Claims Expenses**, by reason of a **Network Security Claim** first made during the **Policy Period** by reason of any **Network Security Wrongful Act**, taking place prior to the end of the **Policy Period** and reported to the **Insurer** pursuant to the General Section Clause 11.

### 2. Extensions

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#### Compensation for Court Attendance and Staff Disruption

- 2.1 With regard to each **Claim**, the **Insurer** shall pay, on behalf of each **Insured**, **Attendance Compensation**, to the **Policyholder**. Compensation provided for by this Extension 2.1 in respect of a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a **Claim**.

#### Acquisition or Creation of Another Company

- 2.2 If, during the **Policy Period**, a **Company**:

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

that entity shall automatically become a **Company** and its individuals set out in the **Insured Persons** Definition 3.17 shall automatically become **Insured Persons** under this Cyber Section with effect from the date of such acquisition or creation but only with respect to **Wrongful Acts** after such acquisition or creation.

However, if such acquired or created entity:

- (ii) has gross consolidated assets that increase the total consolidated assets of all the **Companies** together by more than 25% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**;
- (iii) has annual turnover which is greater than 20% of the turnover of all the **Companies** together as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**; or
- (iv) has any assets in the **USA**,

then:

- a. for that **Company** and its **Insured Persons** to become **Insureds** under this Cyber Section, the **Policyholder** must give written notice of that acquisition or creation, and such information as the **Insurer** may require, to the **Insurer** within 90 days following that acquisition or creation, whereupon they shall become **Insureds** with effect from the date of that acquisition or creation (but only with respect to **Wrongful Acts** after that acquisition or creation); and
- b. the **Insurer** shall have the right to amend the terms of this Cyber Section, including charging an additional premium and including terminating cover for that **Company** and its **Insured Persons**, but only with effect from 90 days after that acquisition or creation.

### 3. Definitions

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When used in bold type in this Cyber Section:

- 3.1 **Act of Cyber-Terrorism** means any act, including force or violence, or the threat thereof expressly directed against the **Company's Computer System** by an individual or group(s) of individuals, whether acting alone, on behalf of or in connection with any organization(s) or government(s), to cause **Unauthorised Use or Access** of, or a targeted **Denial of Service Attack** or transmission of unauthorized, corrupting or harmful software code to the **Company's Computer System** for the purpose of furthering social, ideological, religious, economic or political objectives, intimidating or coercing a government or the civilian population thereof, or disrupting any segment of the economy.
- 3.2 **Bodily Injury** means injury to the body, sickness, or disease, and death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person; unless arising from a **Privacy Wrongful Act** expressly covered under Insuring Clause 1.1.
- 3.3 **Claim** means a **Privacy Claim** or a **Network Security Claim**.
- 3.4 **Company's Computer System** means a **Computer System** leased, owned, or operated by the **Company** or operated for the **Company's** benefit by a third party service provider under written contract with the **Company**.
- 3.5 **Computer Malicious Act** means any dishonest act committed against the **Company's Computer System**, consisting in introducing, altering or destroying the **Company's Data**, without involving any physical damage to the **Company's Computer System**, telecommunications equipment or infrastructure.
- 3.6 **Computer System** means computer hardware, software, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities.
- 3.7 **Consumer Redress Fund** means a sum of money which the **Company** is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding**. **Consumer Redress Fund** shall not include any sums paid which constitute taxes, fines, penalties, injunctions or sanctions.
- 3.8 **Customer** means a person who:
- is applying for, or requesting, a **Company's** products or services;
  - has applied for, or requested, a **Company's** products or services; or
  - is using, or has used, a **Company's** products or services.
- 3.9 **Damages** means compensatory damages, any award of prejudgment or post-judgment interest and settlements which the **Company** becomes legally obligated to pay on account of any **Privacy Claim** or **Network Security Claim**.
- Damages** shall not include:
- any amount for which the **Insured** is not legally obligated to pay;
  - matters uninsurable under the laws pursuant to which this Policy is construed;
  - the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
  - the **Insured's** loss of fees or profits, return of fees, commissions or royalties, or re-performance of services by the **Insured** or under the **Insured's** supervision;
  - disgorgement of any profit, remuneration or financial advantage to which the **Insured** is not legally entitled; or
  - any amounts other than those which compensate solely for a loss caused by a **Wrongful Act**, unless specifically provided for in this Policy.
- Damages** includes punitive damages, exemplary damages, fines and penalties, to the extent such damages are insurable under the laws of the applicable jurisdiction that most favours coverage for such damages.
- Damages** shall also include a **Consumer Redress Fund**, **Payment Card Loss**, and **Regulatory Fines**, subject to the sub-limits stated in Items 10.4, 10.5 and 10.6 of the Schedule.
- 3.10 **Data** means any information, facts or programs stored, created, used, or transmitted on any hardware or software that allows a computer and any of its accessories to function, including systems and applications software, hard or floppy disks,

CD-ROMs, tapes, drives, cells, data processing devices or any other media that are used with electronically controlled equipment or other electronic backup facilities. **Data** does not constitute tangible property.

- 3.11 **Denial of Service Attack** means temporary total or partial malicious deprivation of service to the **Company's Computer System** without the **Company's** information technology equipment, telecommunications equipment or infrastructure, including the associated software resources, sustaining any alteration or destruction.
- 3.12 **Discovered** means learnt of, and **Discovery** means the learning of, by a director, principal, partner, Risk Manager or **Insurance Representative** of a **Company**.
- 3.13 **Expenses** mean **Privacy Claims Expenses, Network Security Claims Expenses, and Incident Response Expenses**.
- 3.14 **Hacking** means the malicious access to the **Company's Computer System**, for the purpose of creation, deletion, confiscation, collection, disruption, divulgence, interruption, or corruption of **Data** or services.
- 3.15 **Incident Response Expenses** means those reasonable and necessary expenses incurred by the **Company** or which the **Company** becomes legally obligated to pay:
- (a) to retain the services of a third party computer forensics firm to determine the cause and scope of a **Network Security** failure, or by an independent contractor for whom the **Company** is legally responsible, to properly handle, manage, store, destroy or otherwise control **Personal Data**;
  - (b) to comply with **Privacy Regulations**, including but not limited to the consumer notification provisions of **Privacy Regulations** of the applicable jurisdiction that most favours coverage for such expenses;
  - (c) to retain a legal or regulatory advisor to communicate with a government agency to determine the applicability and actions necessary to comply with **Privacy Regulations**; and, the costs of responding to any requests for information or demands by any government agency alleging the violation of **Privacy Regulations**, including the costs of providing any necessary privacy impact assessments, or costs to attend hearings;
  - (d) with the **Insurer's** prior consent:
    - (i) to voluntarily notify individuals whose **Personal Data** has been wrongfully disclosed;
    - (ii) to retain a notification service, including the services of a call centre support service, to voluntarily notify individuals whose **Personal Data** has been wrongfully disclosed or otherwise compromised;
    - (iii) to retain the services of a licensed investigator or credit specialist to provide up to one year of fraud consultation to the individuals whose **Personal Data** has been wrongfully disclosed or otherwise compromised;
    - (iv) for credit monitoring, identity theft monitoring, social media monitoring, credit freezing, fraud alert service or fraud prevention software expenses for those individuals who accept an offer made by or on behalf of the **Company** for credit monitoring, credit freezing or fraud alert services;
    - (v) to retain the services of third party identity restoration service for those individuals who are confirmed by a licensed investigator as victims of identity theft directly resulting from a **Wrongful Act** actually or allegedly committed by the **Company** and expressly covered under Insuring Clause 1.1;
    - (vi) to retain the services of a public relations firm, crisis management firm or law firm for advertising or related communications solely for the purpose of protecting or restoring the **Company** reputation as a result of a **Wrongful Act**; or
    - (vii) to retain the services of a law firm solely to determine the **Company's** indemnification rights under a written agreement with an independent contractor with respect to a **Privacy Wrongful Act** or **Network Security Wrongful Act** expressly covered under this Policy and actually or allegedly committed by such contractor.

**Incident Response Expenses** shall not include:

- (a) costs or expenses incurred to update or otherwise improve privacy or network security controls, policies or procedures to a level beyond that which existed prior to the loss event or to be compliant with **Privacy Regulations**;
  - (b) taxes, fines, penalties, injunctions, or sanctions; or
  - (c) the **Insured's** wages, salaries, internal operating costs or expenses, or fees.
- 3.16 **Insurance Representative** means an employee designated to represent a **Company** for the purpose of effecting and maintaining insurance.

3.17 **Insured Person** means:

- (a) any past, present or future principal, partner, officer, director, trustee, employee, leased employee, or temporary employee of the **Company** while acting on the **Company's** behalf or at the **Company's** direction and control;
- (b) a lawyer employed by the **Company** who in their capacity as such must comply with Sarbanes-Oxley Act of 2002 (USA); or
- (c) independent contractors of the **Company**, who are natural persons, whilst performing duties on behalf of the **Company**.

3.18 **Limit of Liability** means the amount stated in Item 3.7 of the Schedule.

3.19 **Loss** means:

- (a) for the purposes of Insuring Clause 1.1: **Damages and Privacy Claims Expenses**.
- (b) for the purposes of Insuring Clause 1.2: **Damages and Network Security Claims Expenses**.

3.20 **Malware** means programs, files or instructions of a malicious nature which may disrupt, harm, impede access to, or in any other way corrupt the operation of or **Data** within, any software or **Computer System**, including, but not limited to malicious code, ransomware, cryptoware, virus, trojans, worms and logic or time bombs.

3.21 **Network Security** means those activities performed by the **Company**, or by others on behalf of the **Company**, to protect against **Unauthorized Use or Access** of, a **Denial of Service Attack** by a third party, or transmission of **Malware** to the **Company's Computer System**.

3.22 **Network Security Claim** means:

- (a) a written demand against the **Company** for monetary or non-monetary damages;
- (b) a civil proceeding against the **Company** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
- (c) an arbitration proceeding against the **Company** seeking monetary damages or non-monetary or injunctive relief;
- (d) a **Regulatory Proceeding**; or
- (e) written notice by the **Insured** to the **Insurer** of a **Network Security Wrongful Act** actually or allegedly committed by the **Insured** which could give rise to a **Network Security Claim** under sections (a) to (d), above.

3.23 **Network Security Claims Expenses** means:

- (a) reasonable and necessary solicitors' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior consent, in the investigation and defence of a covered **Network Security Claim**;
- (b) reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; or
- (c) **Incident Response Expenses**.

3.24 **Network Security Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, breach of duty, or **Personal Injury** offence actually or allegedly committed or attempted by the **Insured** in its capacity as such, resulting in a failure of **Network Security**, including the failure to deter, inhibit, defend against or detect any **Computer Malicious Act**, including:

- (a) **Malware**;
- (b) **Hacking**;
- (c) **Denial of Service Attacks**; or
- (d) **Unauthorised Use or Access**.

3.25 **Payment Card Loss** means monetary assessments, fines, penalties, chargebacks, reimbursements, and fraud recoveries which the **Company** becomes legally obligated to pay as a result of a **Privacy Wrongful Act** or **Network Security Wrongful Act** and where such amount is due to the **Company's** non-compliance with the Payment Card Industry Data Security Standard.

**Payment Card Loss** shall not include:

- (a) subsequent fines or monetary assessments for continued noncompliance with the Payment Card Industry Data Security Standard beyond a period of three months from the date of the initial fine or monetary assessment; or
- (b) costs or expenses incurred to update or otherwise improve privacy or network security controls, policies or procedures.

3.26 **Personal Data** means:

- (a) an individual's name, national identity number or national insurance number, medical or healthcare data, other protected health information, driver's licence number, state identification number, credit card number, debit card number, address, telephone number, email address, account number, account histories, or passwords; or
  - (b) any other nonpublic personal information as defined in **Privacy Regulations**;
- in any format if such information creates the potential for an individual to be uniquely identified or contacted.

3.27 **Personal Injury** means injury arising out of one or more of the following offences:

- (a) false arrest, detention or imprisonment;
- (b) malicious prosecution;
- (c) libel, slander, or other defamatory or disparaging material;
- (d) publication or an utterance in violation of an individual's right to privacy; or
- (e) wrongful entry or eviction, or other invasion of the right to private occupancy.

3.28 **Privacy Claim** means:

- (a) a written demand against the **Company** for monetary or non-monetary damages;
- (b) a civil proceeding seeking monetary damages or non-monetary or injunctive relief against the **Company**, commenced by the service of a complaint or similar pleading;
- (c) an arbitration proceeding against the **Company** seeking monetary damages or non-monetary or injunctive relief;
- (d) a **Regulatory Proceeding**; or
- (e) written notice by the **Insured** to the **Insurer** of a **Privacy Wrongful Act** actually or allegedly committed by the **Insured** which could give rise to a **Privacy Claim** under sections (a) to (d), above.

3.29 **Privacy Claims Expenses** means:

- (a) reasonable and necessary solicitors' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Company** with the **Insurer's** prior consent, in the investigation and defence of a covered **Privacy Claim**;
- (b) reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; or
- (c) **Incident Response Expenses**.

3.30 **Privacy Regulations** means regulations associated with the care, custody, control or use of **Personal Data**;

3.31 **Privacy Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, breach of duty, or **Personal Injury** offence actually or allegedly committed or attempted by the **Insured** in its capacity as such, resulting in the failure by the **Company** or by an independent contractor for which the **Company** is legally responsible to handle, manage, store, destroy or otherwise control:

- (a) **Personal Data**;
- (b) third party corporate information in any format provided to the **Company** and specifically identified as confidential and protected under a nondisclosure agreement or similar contract with the **Company**; or
- (c) an unintentional violation of the **Company's** privacy policy that results in the violation of any **Privacy Regulations**, including but not limited to the unintentional wrongful collection of **Personal Data** by the **Company**.

3.32 **Property Damage** means physical injury to or loss or destruction of tangible property, including the loss of use thereof. However, solely with respect to **Incident Response Expenses** covered under Insuring Clauses 1.1 and 1.2, **Property Damage** does not mean physical injury to, loss or destruction of, or loss of use of **Data**.

- 3.33 **Regulatory Fines** means any civil monetary fine or penalty imposed by a government or regulatory body, including a federal, state, local or foreign governmental entity in such entity's regulatory or official capacity pursuant to its order under a **Regulatory Proceeding**. **Regulatory Fines** shall not include any civil monetary fines or penalties that are not insurable by law, criminal fines, disgorgement of profits or multiple damages.
- 3.34 **Regulatory Proceeding** means a request for information, demand, suit, civil investigation or civil proceeding by or on behalf of a government agency, commenced by a service of a complaint or similar alleging the violation of **Privacy Regulations** by the **Insured** as a result of the **Insured's Privacy Wrongful Act** or **Network Security Wrongful Act**.
- 3.35 **Single Claim** means all **Claims** or other matters giving rise to a claim under this Policy that relate to the same originating source or cause or the same underlying source or cause, regardless of whether such **Claims** or other matters giving rise to a claim under this Policy involve the same or different claimants, insureds, events, or legal causes of action.
- 3.36 **Trade Secret** means information, including a formula, pattern, compilation, program, device, method, technique or process, that derives independent economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain value from its disclosure or use, so long as reasonable efforts have been made to maintain its secrecy.
- 3.37 **Unauthorised Use or Access** means the entry or access to the **Company's Computer System** by an unauthorised party or individual, including an employee or authorised party exceeding authority.
- 3.38 **Wrongful Act** means actual or alleged **Privacy Wrongful Act** or **Network Security Wrongful Act**.
- 3.39 **Wrongful Employment Practices** means any actual or alleged violation of employment laws or any other legal provisions relating to any individual's actual or prospective employment relationship with the **Company**, including:
- employment-related invasion of privacy, except with respect to that part of any **Claim** arising out of the loss of **Personal Data** which is otherwise covered under Insuring Clause 1.1 of this Policy; or
  - employment-related wrongful infliction of emotional distress, except with respect to that part of any **Claim** arising out of the loss of **Personal Data** which is otherwise covered under Insuring Clause 1.1 of this Policy.

## 4. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** on account of any **Claim**:

- 4.1 directly or indirectly caused by, arising out of or in any way connected with the **Insured's** conduct, or of any person for whose conduct the **Insured** is legally responsible, which involves:
- committing or permitting any knowing or willful breach of duty, or violation, of any laws;
  - committing or permitting any criminal, deliberately fraudulent or deliberately dishonest act or omission; or
  - any actual or attempted gain of personal profit, secret profit or advantage by the **Insured** to which the **Insured** were not entitled.

This exclusion only applies where such conduct has been established to have occurred by a **Final Adjudication**.

Conduct of an **Insured Person** shall not be imputed to any other **Insured Person** unless such conduct is by or with the knowledge of a past, present, or future Chairman, Chief Executive, Managing Director, Finance Director, General Counsel, Risk Manager, Insurance Representative, Information Technology Manager, Chief Information Security Officer, Information Security Officer or holder of an equivalent position.

- 4.2 alleging, based upon, arising out of or attributable to any **Bodily Injury** or **Property Damage**.
- 4.3 for breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, including liquidated damages provisions or any liability assumed by the **Company**. This exclusion shall not apply to:
- any liability or obligation the **Company** would have in the absence of such contract, warranty, promise or agreement; or
  - any indemnity by the **Company** in a written contract or agreement with the **Company's** client regarding any **Privacy Claim** suffered by the **Company** that results in the failure to preserve the confidentiality or privacy of **Personal Data** of customers of the **Company's** client.

- 4.4 brought or maintained by the **Company**, or on the **Company's** behalf, or any other natural person or entity for whom or which the **Insured** is legally liable. However, this exclusion shall not apply to **Privacy Wrongful Acts** expressly covered under Insuring Clause 1.1.
- 4.5 alleging, based upon, arising out of or attributable to any:
- (a) illegal discrimination of any kind;
  - (b) humiliation, harassment or misconduct based upon, arising out of or related to any such discrimination; or
  - (c) **Wrongful Employment Practices**.
- However, this exclusion shall not apply with respect to that part of any **Privacy Claim** or **Network Security Claim** alleging employment-related invasion of privacy or employment-related wrongful infliction of emotional distress in the event such claim arises out of the loss of **Personal Data** which is covered under Insuring Clause 1.1.
- 4.6 alleging, based upon, arising out of or attributable to any fees, expenses, or costs paid to or charged by the **Company**.
- 4.7 alleging, based upon, arising out of or attributable to a **Wrongful Act** actually or allegedly committed prior to the beginning of the **Policy Period** if, on or before the earlier of the effective date of this Policy or the effective date of any Policy issued by the **Insurer** of which this Policy is a continuous renewal or a replacement, any principal, partner, officer, director or organizational equivalent of any **Insured Person** knew or reasonably could have foreseen that the **Wrongful Act** did or could lead to a **Claim**.
- 4.8 alleging, based upon, arising out of, or attributable to
- (a) any prior or pending litigation, claims, demands, arbitration, administrative or regulatory proceeding or investigation which was filed or commenced against the **Insured**, and of which the **Insured** had notice, on or before the earlier of the effective date of this Policy or the effective date of any policy issued by the **Insurer** of which this Policy is a continuous renewal or a replacement, or alleging or derived from the same or substantially the same fact, circumstance or situation underlying or alleged therein;
  - (b) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy before the effective date of this Policy; or
  - (c) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute a **Single Claim**.
- 4.9 alleging, based upon, arising out of or attributable to any failure, interruption, or outage to internet access service provided by the internet service provider that hosts the **Company's** website, unless such infrastructure is under the **Company's** operational control.
- 4.10 alleging, based upon, arising out of or attributable to fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused.
- 4.11 alleging, based upon, arising out of or attributable to war, invasion, acts of foreign enemies, terrorism, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. However, this exclusion shall not apply to an **Act of Cyber-Terrorism** which results in a **Claim**.
- 4.12 alleging, based upon, arising out of or attributable to any validity, invalidity, infringement, violation or misappropriation of any patent or **Trade Secret** by or on behalf of the **Insured**.
- 4.13 alleging, based upon, arising out of or attributable to any infringement, violation or misappropriation by the **Insured** of any copyright, service mark, trade name, trademark or other intellectual property of any third party. However, this exclusion shall not apply to a **Privacy Wrongful Act** expressly covered under Insuring Clause 1.1.
- 4.14 alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the unauthorized, surreptitious, or wrongful collection of **Personal Data** by the **Insured** or the failure to provide adequate notice that such information is being collected. However, this exclusion shall not apply to the **Insured's** unintentional violation of any **Privacy Regulation**, including but not limited to the unintentional wrongful collection of **Personal Data**.
- 4.15 for which cover is available under Section 3 Corporate Legal liability, Extension 2.5 Identity Fraud Costs.

## 5. Conditions

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### Change of Business or Insolvency

5.1 If, during the **Policy Period**, a **Company** other than the **Policyholder**:

- (a) completely ceases the primary business it was carrying on at the start of the **Policy Period**; or
- (b) enters into bankruptcy, winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or a receiver or holder of a similar position is appointed over any of its assets,

cover for that **Company** and its **Insured Persons** shall continue until the end of the **Policy Period**, but that cover shall not be for **Wrongful Acts** after such cessation, entry or appointment.

### Duty of Disclosure and Severability

5.2 The **Insured** has a duty to answer all questions posed by the **Insurer** honestly and with reasonable care. The **Insurer** shall have no remedy for any breach, by an **Insured**, of its duty of disclosure prior to inception of, or in connection with, this Cyber Section, unless the **Insurer** demonstrates:

- (a) the **Insured**, in answering the **Insurer's** questions, provided information which the **Insured Person** knew was false or misleading;
- (b) the **Insured** consciously disregarded whether, in answering the **Insurer's** questions, information which the **Insured** provided was false or misleading; or
- (c) any conduct (relative to the contract or the steps leading to its formation) by the **Insured** involves fraud of any other kind.

5.3 With respect to this Cyber Section, the **Presentation** shall be construed as a separate presentation by each **Insured**, and the knowledge of one **Insured Person** shall not be imputed to any other **Insured Person** with respect to statements and information in the **Presentation**.

5.4 In respect of cover provided to a **Company** in this Cyber Section, the knowledge of any of the Chairman, Chief Executive, Managing Director, Finance Director, General Counsel, Risk Manager, **Insurance Representative**, Information Technology Manager, Chief Information Security Officer, or Information Security Officer shall be imputed to it with respect to statements and information in the **Presentation**.

### Limits of Liability

5.5 The **Insurer's** maximum aggregate liability for all **Loss** under this Cyber Section, irrespective of the number of claims made, the amount claimed, the number of **Insureds** who claim, or when during the **Policy Period** such claims are made, shall not exceed the **Limit of Liability**.

5.6 The total amount payable by the **Insurer** (including **Expenses**) in respect of each **Claim** will not exceed the **Limit of Liability**.

5.7 Sub-limits are not subject to reinstatement once exhausted.

5.8 The **Insurer's** maximum liability for **Incident Response Expenses, Consumer Redress Fund, Payment Card Loss and Regulatory Fines**, shall not exceed the sub-limits for **Incident Response Expenses, Consumer Redress Fund, Payment Card Loss, and Regulatory Fines** stated in Items 10.3, 10.4, 10.5, 10.6 of the Schedule.

### Retention

5.9 With respect to each **Claim**, the **Insurer** shall only be liable for that part of **Loss** which is in excess of the Retention stated in Item 10.7 of the Schedule.

### Related Claims and Matters

5.10 A **Single Claim** shall attach to this Cyber Section only if the notice of the first **Claim, Regulatory Proceeding** or other matter giving rise to a claim under this Cyber Section, that became such **Single Claim**, was given by the **Insured** during the **Policy Period**.

### Other Insurance

5.11 If an **Insured** would (but for the existence of this Cyber Section) be entitled to cover under any other insurance policy (other than insurance specifically arranged to apply in excess of this Cyber Section or any sub-limit) in respect of a **Loss**,

the **Insurer** shall not be liable for **Loss** other than in excess of any amount that is or would have been payable (but for the existence of this Cyber Section) under any other such insurance policy.

## **Defence and Settlement**

- 5.12 The **Insurer** shall have the right, but not the duty, to defend **Claims** and appoint lawyers for that purpose.
- 5.13 The **Insured** shall not settle or offer to settle any **Claim**, incur any **Loss** or otherwise assume any contractual obligation or admit any liability with respect to a **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably delayed or withheld.
- 5.14 With respect to any **Claim**, the **Insurer** may at any time pay to the **Policyholder** the amount of the Policy Limit or any applicable sub-limit which remains uneroded, or the amount for which the **Claim** can be settled, whichever is the lowest. Such payment shall immediately discharge all liability of the **Insurer** in respect of the **Claim** including liability for further **Defence Costs** and liability for further **Attendance Compensation**.
- 5.15 The **Insured** shall not prejudice the **Insurer's** interests or its potential or actual rights of recovery, and shall provide to the **Insurer** such information and co-operation as the **Insurer** may reasonably require.
- 5.16 In the event of a dispute or difference between the **Insurer** and the **Insured** about whether a **Claim** should be defended or settled, the **Insurer** shall be entitled to resolve such dispute or difference by obtaining, at its own cost, an opinion as to whether the **Claim** could be successfully defended, from a suitably experienced Senior Counsel approved by the **Insured**. The opinion shall be binding upon the **Insurer** and the **Insured** who shall act accordingly.
- 5.17 The **Insurer** shall advance covered **Network Security Claims Expenses, Privacy Costs Claims Expenses** and any other costs which constitute **Loss** under this Cyber Section. Such advanced sums shall be repaid to the **Insurer** by the relevant **Insured** in the event it is later established the **Insured** was in fact not covered for them.

## Data protection

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We use personal information which you supply to us or, where applicable, to your insurance broker in order to write and administer this Policy, including any claims arising from it.

This information will include basic contact details such as your name, address, and policy number, but may also include more detailed information about you (for example, your age, health, details of assets, claims history) where this is relevant to the risk we are insuring, services we are providing or to a claim you are reporting.

We are part of a global group, and your personal information may be shared with our group companies in other countries as required to provide coverage under your policy or to store your information. We also use a number of trusted service providers, who will also have access to your personal information subject to our instructions and control.

You have a number of rights in relation to your personal information, including rights of access and, in certain circumstances, erasure.

This section represents a condensed explanation of how we use your personal information. For more information, we strongly recommend you read our user-friendly Master Privacy Policy, available here: <https://www2.chubb.com/ie-en/footer/privacy-policy.aspx>. You can ask us for a paper copy of the Privacy Policy at any time, by contacting us at [dataprotectionoffice.europe@chubb.com](mailto:dataprotectionoffice.europe@chubb.com).

## Complaints procedure

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We are dedicated to providing you with a high quality service and want to maintain this at all times. If you feel that we have not offered you a first class service and you wish to make a complaint, in the first instance, please contact the intermediary who arranged this insurance or our Country Manager at:

Chubb European Group SE  
5 George's Dock  
IFSC Dublin 1 DO1 X8N7

Telephone: + 353 (0) 1 440 1700

If you are still dissatisfied, you may contact the Insurance Ireland Information Service, at 5 Harbourmaster Place, IFSC, Dublin 1. The service can advise you on how to proceed further and may be able to help in resolving the problem.

The Financial Services & Pensions Ombudsman (FSPO) may be approached for assistance in limited circumstances if you remain dissatisfied with Chubb final response. [Those limited circumstances are where the policy is taken out by a consumer. The term 'consumer' includes the following:

- individual customers or groups of persons including partnerships and unincorporated bodies such as clubs, charities and trusts
- incorporated bodies or limited companies with turnovers of less than €3,000,000 in previous financial year

A leaflet explaining the procedure is available on request. The FSPO's contact details are:

Financial Services & Pensions Ombudsman, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2, D02 VH29

Telephone: +353 (0) 1 567 7000  
Email: [info@fspoi.ie](mailto:info@fspoi.ie)  
Website: [www.fspoi.ie](http://www.fspoi.ie)

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

## Insurance Act 1936

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All moneys which became or may become due and payable by the Company under this policy shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in the Republic of Ireland.

## Finance Act (1990) Republic Of Ireland

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The appropriate stamp duty has been and will be paid in accordance with the provisions of Section 113 of the Finance Act 1990.

## Financial Regulation

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Chubb European Group SE trading as Chubb, Chubb Bermuda International and Combined Insurance, is authorised by the Autorité de contrôle prudentiel et de résolution (ACPR) in France and is regulated by the Central Bank of Ireland for conduct of business rules.

Registered in Ireland No. 904967 at 5 George's Dock, Dublin 1.

Chubb European Group SE is an undertaking governed by the provisions of the French insurance code with registration number 450 327 374 RCS Nanterre and the following registered office: La Tour Carpe Diem, 31 Place des Corolles, Esplanade Nord, 92400 Courbevoie, France. Chubb European Group SE has fully paid share capital of €896,176,662.

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## Contact Us

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Chubb  
5 George's Dock  
IFSC Dublin 1  
DO1 X8N7  
T + 353 (01) 4401700  
F + 353 (01) 4401701  
[www.chubb.com/ie-en/](http://www.chubb.com/ie-en/)

## About Chubb

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Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. As an underwriting company, we assess, assume and manage risk with insight and discipline. We service and pay our claims fairly and promptly. We combine the precision of craftsmanship with decades of experience to conceive, craft and deliver the very best insurance coverage and service to individuals and families, and businesses of all sizes.

Chubb is also defined by its extensive product and service offerings, broad distribution capabilities, exceptional financial strength and local operations globally. The company serves multinational corporations, mid-size and small businesses with property and casualty insurance and risk engineering services; affluent and high net worth individuals with substantial assets to protect; individuals purchasing life, personal accident, supplemental health, homeowners, automobile and specialty personal insurance coverage; companies and affinity groups providing or offering accident and health insurance programs and life insurance to their employees or members; and insurers managing exposures with reinsurance coverage.

Chubb's core operating insurance companies maintain financial strength ratings of AA from Standard & Poor's and A++ from A.M. Best. , the parent company of Chubb, is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index.

Chubb maintains executive offices in Zurich, New York, London and other locations, and employs approximately 31,000 people worldwide.

## Chubb. Insured.<sup>SM</sup>

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