

# **Directors' & Officers' Liability Insurance**

## **Argenta Syndicate 2121/5353**

## ***Directors' & Officers' Liability Insurance***

### **Argenta Syndicate Management Limited**

Lloyd's Insurance Company S.A. is a Belgian limited liability company (société anonyme / naamloze vennootschap) with its registered office at Bastion Tower, Marsveldplein 5, 1050 Brussels, Belgium and registered with Banque-Carrefour des Entreprises / Kruispuntbank van Ondernemingen under number 682.594.839 RLE (Brussels). It is an insurance company subject to the supervision of the National Bank of Belgium. Its Firm Reference Number(s) and other details can be found on [www.nbb.be](http://www.nbb.be).

Website address: [www.lloyds.com/brussels](http://www.lloyds.com/brussels)

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# Syndicate 2121/5353 - Directors' & Officers' Liability Policy

In consideration of the payment of the premium and in reliance upon the Underwriting Submission, the Insurer and the Policyholder agree as follows:

## 1. Insurance Cover

### Insurance Cover A: DIRECTORS' AND OFFICERS' LIABILITY

The Insurer shall pay the Loss of each Insured resulting from any Claim first made against the Insured during the Policy Period for any Wrongful Act in the Insured's capacity as a Director, Officer or Employee of the Company except for and to the extent that the Company has indemnified the Insured.

### Insurance Cover B: CORPORATE REIMBURSEMENT

The Insurer shall pay the Loss of the Company in excess of the Retention resulting from any Claim first made against the Insured during the Policy Period for any Wrongful Act in the Insured's capacity as a Director, Officer or Employee of the Company but only when and to the extent that the Company has indemnified the Insured for the Loss.

The liability of the Insurer under this policy is subject to the Limit of Liability. The Policyholder's cover is subject to the terms of this policy, including the exclusions described in section 4.

Cover for any Claim against any of the Directors, Officers and Employees of any Subsidiary shall apply only for Wrongful Act(s) occurring while such Company is a Subsidiary of the Policyholder.

## 2. Definitions and Interpretation

2.1 **Associated Company** means any company of which the Policyholder owns on or before the inception of the Policy Period any amount which is less than or equal to 50% of the issued and outstanding voting shares either directly or indirectly through one or more of its Subsidiaries.

2.2 **Claim** means:

- (i) a written demand for monetary damages, non-monetary relief, injunctive relief, a request for standstill or tolling agreement (where otherwise there is no allegation of a Wrongful Act);
- (ii) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading;
- (iii) any criminal prosecution commenced by a summons or charge; or
- (iv) a Formal Investigation,

against any Insured for a Wrongful Act, including any appeal relating to such a Claim.

Any Claim or Claims in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to a Single Wrongful Act shall be considered to be a single Claim for the purposes of this policy.

- 2.3 **Company** means the Policyholder specified in Item 1 of the Schedule and any Subsidiary.
- 2.4 **Continuity Date(s)** means the date(s) specified in Item 7 of the Schedule. The pending and prior litigation Continuity Date shall be the date from which the Policyholder has maintained uninterrupted cover with the Insurer, or with any other insurer, or such other date(s) as agreed with the Insurer.
- 2.5 **Defence Costs** means reasonable and necessary fees, costs and expenses incurred with the written consent of the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without obligation to apply for or furnish any bond) arising solely in relation to the investigation, adjustment, defence, settlement or appeal of any Claim but shall not include the remuneration of any Insured or time costs or overheads of the Company.
- 2.6 **Director or Officer** means any natural person who was, now is, or shall be a director or officer of the Company. The terms Director and Officer shall also mean any equivalent position under the laws of any jurisdiction.
- 2.7 **Discovery Period** means the period of time specified in Extension 3.4, immediately following the termination and/or expiry of this policy during which written notice may be given to the Insurer of any Claim first made against the Insured during such period of time for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy.
- 2.8 **Employee** means any natural person who is:
- a. under a contract of service with the Company;
  - b. a labour master or labour only subcontractor or person supplied by any of them;
  - c. under a work experience or similar scheme; or
  - d. hired or borrowed by the Company from another employer
- and working for the Company in connection with the Company's business while under the direct control or supervision of the Company.
- 2.9 **Employment Practice Claim** means a Claim alleging an Employment Practice Violation.
- 2.10 **Employment Practice Violation** means any actual or alleged unfair or wrongful dismissal, discharge or termination, either actual or constructive, of employment, including breach of an implied contract; employment-related misrepresentation; wrongful failure to employ or promote; wrongful deprivation of career opportunities, wrongful discipline; failure to furnish accurate job references; failure to grant tenure or negligent Employee evaluation; sexual or workplace or racial or disability harassment of any kind (including the alleged creation of a harassing workplace environment); unlawful discrimination, whether direct, indirect, intentional or unintentional; failure to provide adequate Employee policies and procedures; or Retaliation (including lockouts).
- 2.11 **Formal Investigation** means any official investigation, examination, hearing, enquiry or other formal administrative or regulatory proceeding in relation to the affairs of the Company, whether conducted by any regulatory, governmental, judicial or similar body or agency, but shall not include any routine

enquiry, supervision or compliance review (whether regulatory or otherwise), or any industry investigation not solely related to the conduct of the Company or an Insured.

2.12 **Full Annual Premium** means the annual premium level in effect immediately prior to the end of the Policy Period.

2.13 **Insured** means any natural person who was, is, or shall become:

- a. a Director or Officer of the Company and cover will automatically apply to any natural person who becomes a Director or Officer after the inception date of this policy; and
- b. an Employee of the Company, but only for a Claim or Claims alleging Wrongful Act(s) committed by the Employee in a managerial or supervisory capacity and for this purpose, with respect to an Employment Practice Claim only, Insured shall include any past, present or future Employee of the Company.

For the avoidance of doubt the term Insured shall not include external auditors appointed in accordance with Part 16 of the Companies Act 2006 (UK) or any amendments to or similar legislation in any other jurisdiction, nor shall it include any liquidator, administrator or receiver of the Company.

2.14 **Insurer** means Syndicate 2121 or 5353 as managed by Argenta Syndicate Management Limited and (if applicable) those other insurers named as subscribers to this policy each for their several percentage share as shown in the Schedule of the rights and obligations hereunder including Premium and the Limits of Liability.

2.15 **Limit of Liability** means the Limit of Liability specified in Item 3 of the Schedule and is the total aggregate limit of the insurer's liability for all loss under all insurance covers under this policy combined. The Limit of Liability for the Discovery Period shall be part of and not in addition to the total aggregate Limit of Liability for the Policy Period. Loss in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to any Claim which is made subsequent to the Policy Period or Discovery Period which pursuant to General Provision 5.3 is considered made during the Policy Period or Discovery Period shall also be subject to the same total aggregate Limit of Liability. Defence Costs are not payable by the Insurer in addition to the total aggregate Limit of Liability. Defence Costs are part of Loss and are subject to the total aggregate Limit of Liability for Loss.

2.16 **Loss** means damages, judgments, settlements and Defence Costs; however, Loss shall not include:

- (i) civil or criminal fines or penalties imposed under statute or law;
- (ii) taxes;
- (iii) any amount, other than Loss incurred by the Company as indemnification of the Insured, for which the Insured is not legally liable;
- (iv) matters which are uninsurable under the law applicable to this policy.

2.17 **Outside Entity** means any Associated Company. Outside Entity also means any other corporation, partnership, joint venture or other organisation which has been listed by endorsement to this policy.

2.18 **Policyholder** means the organisation specified in Item 1 of the Schedule.

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

- 2.20 **Pollutants** include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) material to be recycled, reconditioned or reclaimed, including nuclear materials.
- 2.21 **Retaliation** means a Wrongful Act of an Insured relating to or alleged to be in response to any of the following activities:
- (i) the disclosure or threat of disclosure by an Employee to a superior or to any governmental agency or authority of any act by an Insured which act is alleged to be a violation of the law, common or statutory, of any state, territory, jurisdiction or political subdivision thereof;
  - (ii) the actual or attempted exercise by an Employee of any right that such employee has under law, including rights under any law relating to employee rights; or
  - (iii) any Employee strike, work to rule or other similar action.
- 2.22 **Retention** means the applicable retention amount specified in Item 4 of the Schedule and as may be otherwise specified in Item 5 of the Schedule. The insurer shall only be liable for the amount of loss arising from a Claim which is in excess of the Retention with regard to all loss under all insurance covers under this policy for which the Company has indemnified, is permitted or is required to indemnify the Insured. The Retention amount is to be borne by the company and shall remain uninsured. A single Retention amount shall apply to Loss arising from all Claims alleging a Single Wrongful Act.
- 2.23 **Security** means any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security of the Company, and shall include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or purchase, voting trust certificate relating to, certificate of deposit for, or other interest in any of the foregoing.
- 2.24 **Single Wrongful Act** means a Wrongful Act and Wrongful Act(s) which are the same, related, repeated or continuous, or Wrongful Act(s) which arise from or are connected with the same originating cause or source. Multiple Claims under this policy can allege a Single Wrongful Act, regardless of whether such Claims involve the same or different claimants, Insureds or legal causes of action. Such Claims may be considered to be a single Claim for the purposes of this policy, in accordance with the definition of Claim in clause 2.2 above.
- 2.25 **Subsidiary** means companies in which the Policyholder, either directly or indirectly through one or more of its Subsidiaries:
- (i) controls the composition of the board of directors; or
  - (ii) controls more than half of the voting power; or
  - (iii) holds more than half of the issued share capital,
- on or before the inception date of this policy.
- 2.26 **Transaction** means any one of the following events:
- (i) the Policyholder consolidates with or merges into, or sells more than 50% of the total value of its assets to, any other person or entity or group of persons and/or entities acting in concert; or

- (ii) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the Company or control the appointment of Directors who are able to exercise a majority of votes at board meetings of the Company.

2.27 **Underwriting Submission** means all signed proposal forms, statements, warranties, and representations made in them; including attachments, financial statements and any other documents of any Company submitted to the Insurer.

2.28 **Wrongful Act** means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act by the Directors, Officers or Employees in their respective capacities as a Director, Officer or Employee of the Company or as a director or officer of any Outside Entity. The term Wrongful Act shall include any Employment Practice Violation.

2.29 Any reference to a statute or statutory provision is a reference to it as may be amended, supplemented re-enacted or replaced from time to time.

### 3. Extensions

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The extensions set out in this clause 3 apply to the extent specified in the Schedule, subject to all of the terms and conditions of this policy.

#### 3.1 Representation at Investigations and Examinations

This policy shall provide cover for any reasonable and necessary fees, costs and expenses incurred by the Company or the Insured with the prior written consent of the Insurer, in addition to any Defence Costs that may already be covered under this policy and up to an aggregate limit of GBP100,000 (or currency equivalent), attributable directly to any required attendance by any Director, Officer or Employee of the Company in relation to any Formal Investigation. The cover under this Extension 3.1 forms part of, and not in addition to, the Limit of Liability.

#### 3.2 New Subsidiaries

Cover under this policy is extended to any Subsidiary which the Policyholder acquires or creates after the inception date of this policy provided that the Subsidiary:

- (i) has total gross assets which are less than the amount specified in Item 8 of the Schedule;

and

- (ii) does not have a listing of any of its Securities on any exchange in the United States of America or Australia.

If a newly acquired or created Subsidiary fails to meet conditions (i) and (ii) above the Policyholder may request an extension of this policy for such Subsidiary provided that the Policyholder shall give the Insurer sufficient details to permit the Insurer to assess and evaluate the Insurer's potential increase in exposure. In the event that conditions (i) and (ii) above are not met, the Insurer shall be entitled to decline to offer cover to any Subsidiary or, alternatively, amend the policy terms and conditions, during the Policy Period, including by the charging of a reasonable additional premium.

Unless otherwise agreed, cover afforded to the Directors, Officers or Employees of any Subsidiary by virtue of this extension shall only apply for Wrongful Act(s) committed while such Company is or was a Subsidiary of the Policyholder. However, upon written request by the Policyholder, the Insurer may consider at its sole discretion, after assessment and evaluation of the increased exposure, granting cover for Wrongful Act(s) committed prior to the acquisition of the Subsidiary by the Policyholder.

### 3.3 Outside Directorships

Cover includes Loss arising from any Claim made against any Insured who was, is or may become, at the specific request of the Company, a director, officer, trustee, governor or equivalent position, in any Outside Entity for any Wrongful Act in such Insured's capacity as a director, officer, trustee, governor or equivalent position, in the Outside Entity.

This cover shall be specifically excess of any insurance in force in respect of the Outside Entity as well as any indemnification provided by the Outside Entity. If the other insurance is provided by the Insurer (or would be provided except for the application of the Retention amount or the exhaustion of the Limit of Liability), then the total aggregate Limit of Liability for all Loss covered by virtue of this extension shall be reduced by the limit of liability specified in the schedule of the other insurance provided to the Outside Entity.

The cover provided by this clause shall not apply in connection with any Claim made against any Insured by the Outside Entity, any of its directors, officers, trustees, governors or equivalent or any shareholder of the Outside Entity holding more than 20% of the issued and outstanding voting share capital of the Outside Entity; provided, however, that the restrictions of cover contained in this paragraph shall not apply to:

- (i) any Employment Practice Claim brought by any director, officer, trustee, governor or equivalent, of the Outside Entity;
- (ii) any Claim for contribution or indemnity, if the Claim directly results from another Claim otherwise covered by this extension;
- (iii) any shareholder derivative action brought or maintained on behalf of the **Outside Entity** without the solicitation or participation of any Insured or any director, officer, trustee, governor or equivalent, of the Outside Entity;
- (iv) any Claim brought or maintained by a liquidator, receiver or administrative receiver derivatively on behalf of the Outside Entity without the solicitation or participation of any Insured or any director, officer, trustee, governor or equivalent, of the Outside Entity.

### 3.4 Discovery Period

If the Insurer refuses to renew this policy, then the Policyholder shall have the right, upon payment of an additional premium of 100% of the Full Annual Premium to a Discovery Period of 12 months following the effective date of non-renewal.

To purchase the Discovery Period, the Policyholder must request its purchase in writing within 30 days of the termination date of the policy and must tender the additional premium within 60 days of the termination date. The additional premium is not refundable and the Discovery Period is not cancellable.



If a Transaction takes place, then the Policyholder shall not have the right to purchase a Discovery Period as set out above. However, the Policyholder shall have the right within 60 days of the end of the Policy Period to request an offer from the Insurer of a Discovery Period. The Insurer may, at its sole discretion, offer a Discovery Period with such terms, conditions, length of period and premium as the Insurer may reasonably decide.

### **3.5 *Retired Directors, Officers and Employees***

If the Policyholder does not renew or replace this policy with any other policy affording directors and officers liability cover and a Discovery Period is not elected under Extension 3.4 above, the insurer will provide a Discovery Period of 36 months under this policy after the date of such non-renewal during which time written notice may be given to the Insurer of any Claim first made against any Director, Officer or Employee of the Company who retired before the date of non-renewal and which Claim is otherwise covered by this policy.

### **3.6 *Heirs, Estates and Legal Representatives***

If an Insured dies, becomes mentally ill (or a patient for any purpose of any statute relating to mental health), insolvent or bankrupt, this policy shall cover Loss arising from any Claim made against the estate, heirs, or legal representatives of the Insured for any Wrongful Act of such Insured.

### **3.7 *Joint Property Liability***

This policy shall cover Loss arising from any Claim made against the lawful spouse (whether that status is derived by reason of the statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Insured for any Claim arising out of his or her status as the spouse of an Insured, including any Claim that seeks damages recoverable from marital community property or property jointly held by the Insured and the spouse; provided, however, that this extension shall not afford cover for any Claim for any Wrongful Act of the spouse and that this policy shall apply only to Wrongful Act(s) of an Insured.

### **3.8 *Extradition Proceedings***

This policy shall pay the reasonable fees, costs and expenses of the Insured, acting in their capacity as such, incurred with the Insurer's prior written consent, in connection with challenging, resisting and/or defending extradition proceedings brought against such Insured, following the earlier of:

- i) receipt by such Insured of an official notice in writing from the responsible governmental authority advising of a request for extradition being made against them; or
- ii) the execution of a warrant for arrest of such Insured,

during the Policy Period.

Coverage in respect to this extension shall not include the Insured's remuneration, costs for their time or costs and/or overheads of the Company and shall be sub-limited to and aggregate limit of EUR200,000 (or currency equivalent).

Extradition proceedings includes any related appeal, judicial review applications challenging the designation of any territory for the purposes of the Extradition Act 2003 (including for the avoidance of doubt the selection of the USA as a designated category 2 territory), any extradition decision by the Secretary of State or applications to the European Court of Human Rights or similar court with respect to extradition proceedings.

## 4. Exclusions

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The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the Insured:

- 4.1 in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to:
- (i) the gaining of any personal profit or advantage to which the Insured was not legally entitled;
  - (ii) profits made from the purchase or sale by the Insured of Securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 (USA) or similar provisions of any state statutory law;
  - (iii) the committing of any dishonest or fraudulent act.

For the purpose of determining the applicability of these exclusions in this exclusion 4.1, the Wrongful Act of any Insured shall not be imputed to any other Insured. These exclusions shall only apply if it is established through a judgment, or any admission by an Insured that the relevant conduct did in fact occur. The Insurer may request that an opinion is obtained from a Queens Counsel (or equivalent in a different jurisdiction) as to the prospects of a court or other tribunal finding that the conduct did occur and this exclusion shall apply if the counsel is of the opinion that there are no reasonable prospects of the court or tribunal finding that such conduct did not occur;

- 4.2 in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Act(s) alleged or contained in any claim or in any circumstances under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- 4.3 in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to any pending or prior litigation as of the pending and prior litigation Continuity Date specified in Item 6 (i) of the Schedule, or alleging or deriving from the same or essentially the same facts as alleged in the pending or prior litigation. For the purposes of this exclusion, the term 'litigation' shall include, but not be limited to, any civil or criminal proceedings as well as any Formal Investigation or arbitration or adjudication;
- 4.4 which is brought by or on behalf of any Insured or the Company; provided, however, that this exclusion shall not apply to:
- (i) any Employment Practice Claim brought by any Insured;
  - (ii) any Claim brought or maintained by an Insured for contribution or indemnity, if the Claim directly results from another Claim otherwise covered under this policy;
  - (iii) any Claim brought or maintained by a liquidator, receiver or administrative receiver, or similar person under the laws of any other jurisdiction, either directly or derivatively on behalf of the Company without the solicitation or active participation of any Insured or the Company;
  - (v) any Claim brought or maintained by any former Director, Officer or Employee of the Company.
- 4.5 in connection with, arising out of, based upon or attributable to or in any way involving or relating to, directly or indirectly, the actual, alleged or threatened discharge, dispersal, release or escape of

Pollutants; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants, nuclear material or nuclear waste.

- 4.6 in a capacity as trustee or fiduciary under law (statutory or non-statutory, including common law) or administrator of any pension, profit sharing or Employee benefits programme, including but not limited to an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or the Pensions Act 1995 (UK) or any similar provisions of the law, common or statutory, of any state, territory, jurisdiction, or political subdivision of them;
- 4.7 in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to any act or omission in the Insured's capacity as a director or officer of any entity other than the Company, or by reason of the Insured's status as a director, officer or Employee of the other entity, other than as provided in Extension 3.2 and Extension 3.3;
- 4.8 for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including loss of use of the property.
- 4.9 in connection with, arising out of, based upon or attributable or in any way involving or relating to, directly or indirectly, the failure or inability of the Company or the Insured to collect or recover any amount insured under any policy issued to or on behalf of the Company or the Insured, due to the financial inability of the insurer that issued such policy to pay such amount;
- 4.10 alleging or in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to the Company's or an Insured's performance of or failure to perform professional services for others, or any related act, error, or omission;
- 4.11 in any way relating to, directly or indirectly, in connection with, arising out of or based upon or attributable to any alleged untrue or misleading statement or information provided by any Insured or omissions of any Insured in respect of a prospectus and/or related documents and/or statements relating to the Company's shares or any alleged breach of listing rules;
- 4.12 in any way relating to, directly or indirectly, in connection with, arising out of or based upon or attributable to any pre-action employee grievance or investigation of any such pre-action employee grievance.

## 5. General Provisions

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### 5.1 Representation and Severability

In granting cover to any one Insured, the Insurer has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied.

A proposal for cover under this policy by the Policyholder shall be construed as a separate proposal by each of the Insured. With respect to statements and particulars in the proposal, no statements made or knowledge possessed by any Insured shall be imputed to any other Insured to determine whether cover is available for any Claim made against such other Insured.

## 5.2 **Changes in Risk During Policy Period**

- (i) If a Transaction takes place during the Policy Period, then the cover provided under this policy is amended to apply only to Wrongful Act(s) committed prior to the effective date of the Transaction.
- (ii) If, during the Policy Period, the Company decides to make an initial offering of its Securities in any jurisdiction, whether its Securities are already traded or not, by any means, public or private, then as soon as the information is publicly available, the Company shall provide the Insurer with any prospectus or offering statement for the Insurer's evaluation and assessment of the increased exposure of the Insured. The Insurer shall be entitled at its sole discretion to amend the terms and conditions of this policy (including without limitation to cancel the cover under this policy or to amend the cover provided under this policy to apply only to Wrongful Act(s) committed prior to the date of the offering) and/or charge a reasonable additional premium reflecting the increase in exposure.

At the Policyholder's request, prior to the public announcement of such Securities offering, the Insurer shall evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this policy and of any resulting additional premium. In this event and at the request of the Policyholder, the Insurer will enter into a confidentiality agreement with the Policyholder relating to any information provided regarding the proposed Securities offering.

## 5.3 **How to Give Notice and Report a Claim**

- (i) Notice of a Claim or of circumstances which may result in a Claim shall be either:
  - (a) given in writing to:

The Claims Department,  
Argenta Syndicate Management Limited  
5th Floor, 70 Gracechurch Street, London EC3V 0XL,

in which case the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice; or
  - (b) by email to: [LiabilityClaims@ArgentaGroup.com](mailto:LiabilityClaims@ArgentaGroup.com) in which case the date of transmission of the email shall constitute the date that notice was given.
- (ii) The Company or the Insured shall give written notice to the Insurer of any Claim made against an Insured as soon as practicable and either:
  - (a) at any time during the Policy Period or during the Discovery Period; or
  - (b) within 30 days after the end of the Policy Period or the Discovery Period, as long as such Claim(s) is reported no later than 30 days after the date such Claim was first made against an Insured.
- (iii) If, during the Policy Period or during the Discovery Period written notice of a Claim against an Insured has been given to the Insurer pursuant to the terms and conditions of this policy, then any Claim in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to the facts alleged in the Claim previously notified to the Insurer or alleging a Single Wrongful Act which is the same as or related to any Wrongful Act alleged in the previously notified Claim, shall be considered made against the Insured and reported to the Insurer at the time the first notice was given.

- (iv) If during the Policy Period or during the Discovery Period, the Company or the Insured:
- (a) become aware of any circumstances which may be expected to give rise to a Claim being made against an Insured; and
  - (b) give written notice to the Insurer of the circumstances and the reasons for anticipating a Claim, with full particulars as to dates and persons involved, either:
    - a. at any time during the Policy Period or during the Discovery Period; or
    - b. within 30 days after the end of the Policy Period or the Discovery Period, as long as such notice is given no later than 30 days after the date the Company or Insured became aware of such circumstances,

then, if the notification of the circumstance is accepted by the Insurer as a valid notification, the following shall apply: any Claim which is subsequently made against an Insured and reported to the Insurer in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to the circumstances, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged or contained in those circumstances, shall be considered made against the Insured and reported to the Insurer at the time the notice of the circumstances was first given.

#### 5.4 **Advancement of Costs**

The Insurer shall advance to the Insured or the Company Defence Costs under all insurance covers under this policy before the conclusion of the Claim. If written consent cannot be obtained from the Insurer for emergency Defence Costs, the Insurer will give retrospective consent to such Defence Costs, up to 10% of the Limit of Liability subject to the acceptance of the claim.

In the event and to the extent that the Company or the Insured shall not be entitled to payment of the relevant Loss under the terms and conditions of this policy, the Company or the Insured shall, severally according to their respective interests, repay the advance payments to the Insurer.

In the event and to the extent that the Company is permitted or required to indemnify the Insured but for whatever reason fails to do so, the Insurer will advance all Defence Costs to the Insured on behalf of the Company. In this case, however, the Company shall repay the Retention amounts specified in Items 4 and/or 5 of the Schedule to the Insurer, unless the Company is insolvent.

#### 5.5 **How Defence Will be Conducted**

The Insurer shall have the right, but not the duty, to defend and contest any Claim. The Insured and the Company shall defend and contest any claim made against the Insured, however, the Insurer shall have the right to effectively associate with the Insured and the Company in the defence and settlement of any Claim that appears reasonably likely to involve the Insurer, including but not limited to effectively associating in the negotiation of any settlement.

The Insured shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any Defence Costs without the prior written consent of the Insurer as a condition precedent to the Insurer's liability under this policy. Only those settlements, stipulated judgments and Defence Costs which have been consented to by the Insurer shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to effectively associate in the defence and the negotiation of any settlement of any Claim in order to reach a decision as to reasonableness.

The Company and the Insured shall give the Insurer full co-operation and all information as the Insurer may reasonably require as a condition precedent to the Insurer's liability under this policy.

In the event that a dispute arises between the Insurer and the Insured regarding whether or not to contest any legal proceedings, neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (to be mutually agreed by the Policyholder and the Insurer) shall advise that the proceedings should be contested. The cost of the Queen's Counsel shall be borne by the Insurer.

## 5.6 ***Terms not Relevant to the Actual Loss***

Where: (i) there has been a failure to comply with a term (express or implied) of this policy, other than a term that defines the risk as a whole; and (ii) compliance with such term would tend to reduce the risk of loss of a particular kind and/or loss at a particular location and/or loss at a particular time, the Insurer will not rely on the breach of such term to exclude, limit or discharge their liability if the Insured shows that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

## 5.7 ***Allocation***

(i) The Insurer has no obligation under this policy for Defence Costs incurred by the Company, or any judgments rendered against or settlements by the Company, or any obligation to pay Loss in any way relating to, directly or indirectly, in connection with, arising out of, based upon or attributable to any legal liability that the Company has to the third party claimant. Accordingly, with respect to:

- (a) Defence Costs jointly incurred by;
- (b) any joint settlement made by; and/or
- (c) any adjudicated judgment of joint and several liability rendered against,

the Company and any Insured, the Company and the Insured and the Insurer agree to use their best efforts to determine a fair and proper allocation of the amounts as between the Company and the Insured and the Insurer, taking into account the relative legal and financial exposures of and the relative benefits obtained by the Insured and the Company.

(ii) In the event that any Claim involves both covered matters and matters not covered under this policy, a fair and proper allocation of any Defence Costs, judgments and/or settlements shall be made between the Company, the Insured and the Insurer taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

(iii) In the event that a determination as to the amount of Defence Costs to be advanced to the Insured under this policy cannot be agreed to, then the Insurer shall advance Defence Costs which the Insurer considers to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions paragraph (iv) below.

(iv) If an amount cannot be agreed upon under paragraph (iii) above, a Queen's Counsel or equivalent (to be mutually agreed by the Policyholder and the Insurer or, in default of such agreement, to be nominated by the then Chair of the Bar Council or local equivalent) shall determine the amount

based upon the written submissions of the Policyholder and the Insurer and such determination shall be final and binding.

#### **5.8 Subrogation**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all of the Company's and the Insured's rights of recovery in respect of the payment, and the Company and the Insured shall execute all papers required and shall do everything that may be necessary to secure any rights including the execution of any documents necessary to enable the Insurer effectively to bring suit in the name of the Company and/or the Insured. In no event however, shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such Insured was not legally entitled.

In the event that a subrogation action results in recoveries, they will be applied in the following order:

- (i) firstly, to reimburse the costs of the subrogation action;
- (ii) secondly, to reimburse the Insured for the amount of any Loss or loss in excess of the Limit of Liability;
- (iii) thirdly, to reimburse the Insurer for the amount of any payment under this policy; and
- (iv) finally, to reimburse the Insured in respect of any Retention and loss that is not covered.

#### **5.9 Other Insurance**

Unless otherwise required by law, any insurance provided under this policy shall apply only as excess over:

- (i) any other valid and collectible insurance; and
- (ii) any other entitlement to indemnification from a third party (whether an Outside Entity or otherwise).

#### **5.10 Notice and Authority**

It is agreed that the Policyholder shall act on behalf of its Subsidiaries and all Insureds with respect to the giving and receiving of notice under this policy and all matters relating to this policy, including the giving of notice of Claim, the payment of premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to a Discovery Period. This clause 5.10 shall cease to apply upon a liquidator, receiver, administrator, administrative receiver (or the equivalent to any of the same) being appointed over the Policyholder.

#### **5.11 Assignment**

This policy and any rights hereunder cannot be assigned by the Policyholder without the written consent of the Insurer.

#### **5.12 Jurisdiction and Governing Law**

Unless otherwise stated in Item 9 of the schedule, any interpretation of or dispute under this policy relating to its construction, validity or operation shall be made in accordance with and governed by English Law.

### 5.13 ***Dispute Resolution***

To the extent that a dispute arises between the Insurer and the Insured out of or in connection with this policy, such dispute shall be referred to a mutually agreed mediator as a condition precedent to any Claim being pursued under the policy against the Insurer. If any such dispute remains unresolved after the mediation process it shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (LCIA). The Rules of the LCIA shall be deemed to be incorporated by reference into this clause, save that the said Rules will not apply in relation to the procedure for the appointment of arbitrators and the number thereof. Three arbitrators shall be appointed. The Insured and the Insurer shall appoint one arbitrator each and a third, who shall be Chairman of the arbitration, shall be appointed by agreement between the Insured and the Insurer. Failing such agreement after 30 days, the Chairman of the arbitration shall be appointed by the President of the LCIA or failing him his duly authorised deputy.

The costs of the arbitrators and the fee to the LCIA shall be borne equally by the Insureds and the Insurers.

### 5.14 ***Titles and Italics***

The titles of these paragraphs are for convenience only and do not lend any meaning to this contract. In this policy words with capitalised first letters have a special meaning and are defined.

### 5.15 ***Complaints Procedure - Ireland***

Any complaint should be addressed to:

Service Manager  
Operations Team  
Lloyd's Insurance Company S.A.  
Bastion Tower  
Marsveldplein 5  
1050 Brussels  
Belgium

Tel: +32 (0)2 227 39 40

E-mail: [lloydsbrussels.complaints@lloyds.com](mailto:lloydsbrussels.complaints@lloyds.com)

Your complaint will be acknowledged, in writing, within 5 (five) business days of the complaint being made. You will also be informed of the name of one or more individuals that will be your point of contact regarding your complaint until the complaint is resolved or cannot be progressed any further. You will be provided with an update on the progress of the investigation of your complaint, in writing, within 20 (twenty) business days of the complaint being made.

A decision on your complaint will be provided to you, in writing, within 40 (forty) business days of the complaint being made.



Should you remain dissatisfied with the final response or if you have not received a final response within 40 (forty) business days of the complaint being made, you may be eligible to refer your complaint to the Financial Services and Pensions Ombudsman (FSPO). The contact details are as follows:

Financial Services and Pensions Ombudsman  
Lincoln House  
Lincoln Place  
Dublin 2  
D02 VH29  
Republic of Ireland

Tel: +353 1 6 567 7000  
E-mail: [info@fspo.ie](mailto:info@fspo.ie)  
Website: [www.fspo.ie](http://www.fspo.ie)

If you have purchased your contract online you may also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is [www.ec.europa.eu/odr](http://www.ec.europa.eu/odr).

The complaints handling arrangements above are without prejudice to your right to commence a legal action or an alternative dispute resolution proceeding in accordance with your contractual rights.

## 5.16 YOUR PRIVACY NOTICE

### WHO WE ARE

We are Lloyd's Insurance Company S.A. (hereafter referred to as "Lloyd's Brussels") found in the contract of insurance and / or in the certificate of insurance.

### THE BASICS

We collect and use relevant information about you to provide you with the insurance cover or the insurance cover that benefits you, and to meet our legal obligations and the obligations of others in the insurance chain.

This information includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover, or the cover from which you benefit. This information may include special categories of personal data details such as information about your health and any criminal convictions you may have.

In certain circumstances, we need your consent to process certain categories of information about you (including special categories of personal data details as mentioned above). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time by sending an e-mail to [data.protection@lloyds.com](mailto:data.protection@lloyds.com) (without however affecting the lawfulness of processing based on consent prior to its withdrawal). Nevertheless, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared and used by a number of third parties in the insurance sector (both inside and outside Belgium, and inside and outside the EU). For example, insurers, insurance agents or insurance brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose your personal information in connection with the insurance cover that is provided, and to the extent that it is needed or allowed by law.

We keep your personal details for no longer than is necessary in offering the insurance arranged or to comply with our legal or regulatory requirements.

### OTHER PEOPLE'S DETAILS YOU PROVIDE TO US

Where you provide us (or your insurance agent or insurance broker) with details about other people, you must ensure that this short form privacy notice is provided to them.

### WANT MORE DETAILS?

For more information about how we use your personal information please see our full privacy notice, which is available in the Privacy section of our website <https://www.lloydsbrussels.com> or in other formats on request.

### COMPLAINTS, CONTACTING US AND THE REGULATOR, AND YOUR RIGHTS

You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or see a copy of our full privacy notice, please contact us or go to the Privacy section of our website <https://www.lloydsbrussels.com> where we have full details. Alternatively, you may contact the insurance agent or insurance broker that arranged your insurance at:

*insurance agent or insurance broker*

You have the right to lodge a complaint with the competent data protection authority, but we encourage you to contact us before doing so.

### **LIMITATION AND EXCLUSION CLAUSE SANCTION**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim 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 that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100  
15 September 2010

### **WAR AND TERRORISM EXCLUSION ENDORSEMENT**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- (d) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (2) any act of terrorism.  
For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.  
In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**NMA2918**  
**08/10/2001**

**INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND  
ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
  - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

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## MAJOR SHAREHOLDER EXCLUSION

It is hereby understood and agreed that the Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the Insured which is brought by or on behalf of whether directly or derivatively any individual or entity that owns or controls (whether beneficially, directly or indirectly) more than the percentage in Item 12 in the schedule of shares in the Company.

## CYBER RISKS ENDORSEMENT

(For use with Financial Institution Wordings)

A Loss (as defined in the Policy to which this endorsement is attached) due to an actual or alleged Wrongful Act (as defined in the Policy to which this endorsement is attached) arising out of a Cyber Act or a Cyber Incident will be payable subject to all of the terms, conditions, warranties and exclusions of this Policy or endorsed hereon.

### Definitions

**Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

**Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

**Cyber Incident** means:

- i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- ii) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

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13 November 2020

## COMMUNICABLE DISEASE EXCLUSION

### (For use on liability policies)

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
  
2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
  
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

### **Breach of Patent Exclusion**

It is hereby understood and agreed that the Insurer shall not be liable for Loss arising from any Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with, any actual or alleged intentional or unintentional breach or infringement or contravention of any patent or copyright or trademark or any other form of intellectual property.

### **Insolvency Exclusion**

It is hereby understood and agreed that the Insurer shall not be liable for Loss arising from any Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with the insolvency or bankruptcy or liquidation or receivership or administration of the Company.

### **Libel and Slander Exclusion**

It is hereby noted and agreed that the Insurer shall not be liable for Loss in connection with any Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any actual or alleged libel or slander or other defamation or invasion of privacy.

## OPTIONAL EXTENSION ENDORSEMENT – EMPLOYEE ENTITY LIABILITY

This extension endorsement will only be effective if specified as “Applicable” in Item 4 of the Declaration.

**Employment Entity Liability** The Insurer shall pay on behalf of the Company Loss (other than Loss payable under any other cover under this policy) arising from any Claim (other than any Claim brought in the United State of America) first made against the Company during the Policy Period or, if applicable, during the Discovery Period, and notified to the Insurers in accordance with clause 5.3, for any Employment Wrongful Act committed by the Company.

### Definition

**Employment Wrongful Act** means any actual or alleged:

- i) discrimination or harassment or wrongful discipline or negligent evaluation of an Employee or of a prospective Employee; or
  - ii) constructive or actual wrongful or unlawful discharge or dismissal or termination of employment or the wrongful demotion or the refusal to promote or the wrongful deprivation of career opportunity of an Employee or the wrongful refusal to employ a natural person as an Employee; or
  - iii) retaliatory action taken against an Employee proven to have arisen from that Employee exercising or attempting to exercise of his or her rights according to applicable law; or
  - iv) employment related libel or slander or other defamation or humiliation or invasion of privacy or misleading representation or misleading advertising relating to employment;
- save that Employment Wrongful Act does not mean any order or judgment to reinstate any Employee.

### Exclusion

The Insurer shall not be liable to make any payment for Loss in connection with any Claim in respect of this endorsement in relation to the:

- 1) actual or alleged breach of applicable laws relating to collective redundancies, transfer of undertakings or other obligations to inform and/or consult Employees or their representatives;
- 2) actual or alleged liability under applicable laws relating to minimum wage, deductions from wages, working time, holiday pay, disability benefits, unemployment benefits, retirement benefits, social security benefits, redundancy benefits, compensation or unemployment insurance;
- 3) order or judgment to reinstate or reengage any Employee;
- 4) actual or alleged liability under any employment contract or agreement, other than any liability which the Company would face in the absence of such a contract or agreement and which is not otherwise excluded;
- 5) lock-out, strike, picket line, unfair labour practices, or labour or grievance proceeding pursuant to a collective bargaining agreement, or actual or alleged breach of applicable laws relating to unlawful inducement, detriment or offer to an Employee trade union member or potential member.