

# DUAL

CORPORATE RISKS

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This is to certify that in accordance with the authorisation granted under Contract to the undersigned by Arch Insurance Company (Europe) Limited and in consideration of the premium specified in the Schedule We, the Insurers named below, are hereby bound to insure in accordance with the terms and conditions contained herein or endorsed hereon.

We hereby agree, to the extent and in the manner hereinafter provided, to indemnify or otherwise pay *You* in respect of the contingencies or events specified in the sections of the Certificate. However this Certificate only applies to those Sections as indicated in the Schedule attached to this Certificate.

The Certificate, Schedule, Exclusions and General Conditions shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the Certificate, Schedule, Exclusions and General Conditions shall bear the same meaning wherever it may appear.

Please read **this Certificate** and, if it is incorrect, return it immediately for alteration.

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Signed by **DUAL CORPORATE RISKS LIMITED** acting for  
Arch Insurance Company (Europe) Limited





## PRIVATE

### THIS IS A CLAIMS MADE CERTIFICATE OF INSURANCE

In consideration of the payment of premium, We agree to insure *You* and the *Company* in accordance with the terms of this Certificate.

#### Section 1: Standard Cover

##### 1.1 Cover For You

We will pay *Loss* as incurred by *You* in respect of any *Claim* made against *You* during the *Certificate Period* (or a *Discovery Period*, if applicable) for a *Wrongful Act*.

##### 1.2 Cover For The Company

We will pay *Loss* as incurred by the *Company* in respect of:

- (i) any *Claim* made against *You* for a *Wrongful Act* where the *Company* pays *Loss* on behalf of *You*; or
- (ii) any *Claim* made against the *Company* for a *Wrongful Act*; or
- (iii) any legally required attendance by the *Company* or on behalf of the *Company* at any official investigation into:
  - (a) the health and safety affairs of the *Company*; or
  - (b) any employment related affairs of the *Company*.

With regard to 1.2 (iii) above *Loss* shall be limited to *Costs* only.

#### Section 2: Additional Cover

##### 2.1 Automatic Reinstatement of the Limit of Liability For Non-Executive Directors

In the event of a reduction (in whole or in part) of the *Limit of Liability* due to payment by *Us* of *Loss* it is agreed that the *Limit of Liability* shall be reinstated by the amount which the *Limit of Liability* is reduced provided in all events that:

- (i) the reinstated amount of the *Limit of Liability* will only be available for any subsequent *Loss* on account of any *Claim* that is entirely unrelated to the *Claim* that causes the reduction of the *Limit of Liability*; and
- (ii) the maximum amount of *Loss* paid by *Us* in respect of any number of *Claims* which arise out of or are attributable to or are in any way connected with a single *Wrongful Act* shall not exceed the *Limit of Liability*; and
- (iii) the total amount payable by *Us* under this Certificate shall not exceed twice the *Limit of Liability*; and
- (iv) if the *Company* has in effect any policy or policies providing coverage in excess of this Certificate, then the reinstated amount of the *Limit of Liability* as allowed for by this clause will take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies; and
- (v) this provision shall only be available to *You* to the extent that *You* are a non-executive director of the *Company* as described in Section 3.15 (b) of the Certificate; and
- (vi) this provision shall not apply in respect of Section 2.2, Section 2.6 or 2.7 of this Certificate.

##### 2.2 Public Relations Cover

In the event that *You* or the *Company* reasonably consider that the services of a public relations consultancy are required urgently in order to prevent or minimise the risk of a *Claim* which would be covered under this Certificate, then *We* will reimburse reasonable fees and costs incurred as a result of *You* or the *Company* instructing an appropriate consultancy up to a maximum limit of GBP50,000 in the aggregate for all such *Claims*. This limit shall be in addition to the *Limit of Liability* stated in Item 3 of the Schedule. *Your* or the *Company's* entitlement to this additional cover is conditional on *You* or the *Company* providing *Us* with full written details of the appropriate action taken no later than 30 days after *You* or the *Company* first become aware of any occurrence that requires the services of a public relations consultancy.

##### 2.3 Retirement Cover

If the *Company* does not renew this Certificate or replace it with any other insurance providing directors and officers liability coverage and one of the *Discovery Period Options* detailed in Section 2.3 of this Certificate has not been purchased then *You* will be automatically entitled to a 72 month extension to the *Certificate Period* at no additional premium after the expiry of the *Certificate Period* provided that *You* retired prior to the expiry date of the *Certificate Period*.

For the purposes of this Section 2.3 “retired” means that *You* ceased to hold your position with the *Company* for whatever reason.

It is agreed, however, that this Section 2.3 will be of no effect in relation to *You* if *You* retired due to an occurrence taking place as described in Section 8.3 of this Certificate.

## 2.4 Discovery Period Options (Bilateral)

- 2.4.1 If *We* refuse to offer to renew this Certificate, then the *Company* or *You* shall be entitled to purchase an extension to the *Certificate Period* (a “Discovery Period”) of either:
- (a) 12 months from the expiry of the *Certificate Period* upon payment of an additional premium of 100% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
  - (b) 24 months from the expiry of the *Certificate Period* upon payment of an additional premium of 175% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule.
- 2.4.2 Alternatively, if the *Company* or *You* choose not to renew this Certificate, then the *Company* or *You* shall be entitled to purchase a Discovery Period of 12 months from the expiry of the *Certificate Period* upon payment of 100% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule.
- 2.4.3 If the *Company* or *You* do not purchase a Discovery Period of 12 or 24 months, then *You* shall be entitled for no additional premium to a Discovery Period of 30 days.
- 2.4.4 The cover granted during a Discovery Period applies only to a *Claim* made against *You* during a Discovery Period for a *Wrongful Act* committed prior to the expiry of the *Certificate Period*.
- 2.4.5 The *Company* or *You* are not entitled to a Discovery Period in the event of an occurrence taking place as described in Section 8.3 of this Certificate. In this case, however, the *Company* or *You* may be entitled to purchase a further policy from *Us* as described in Section 2.4 of this Certificate.
- 2.4.6 The provision of a Discovery Period is conditional upon:
- (a) the *Company* or *You* giving *Us* written confirmation of the Discovery Option required within 30 days of the expiry of the *Certificate Period*; and
  - (b) payment of the additional premium for a Discovery Period within 30 days of the expiry of the *Certificate Period*; and
  - (c) this Certificate not being replaced by any other insurance affording directors and officers liability cover (however this condition shall not apply where the *Company* purchases a Discovery Period in accordance with Section 2.4.2); and
  - (d) this Certificate not being cancelled in accordance with Section 8.4.
- 2.4.7. Any offer by *Us* of renewal terms, conditions, limits of liability or premium different from those in this Certificate does not constitute a refusal to offer to renew.
- 2.4.8 If a Discovery Period is effected, the *Limit of Liability* shall not be increased in any way.
- 2.4.9 A Discovery Period may not be cancelled and the additional premium for a Discovery Period is not refundable.

## 2.5 Pre-Agreed Run-Off Coverage

In the event of an occurrence taking place as described in Section 8.3. the *Company* or *You* shall be entitled to request from *Us* a replacement run-off Certificate. In such event *We* agree to offer a replacement run-off Certificate:

- (a) for a period of 12 months for a premium of no more than 100% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (b) for a period of 24 months for a premium of no more than 150% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (c) for a period of 36 months for a premium of no more than 175% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (d) for any other period or premium as may be mutually agreed between the *Company* and *Us*.

It is agreed, however, that if *You* or the *Company* have provided *Notification* or have made us aware of a *Wrongful Act* that could give rise to a *Claim*, then *We* are not bound to provide a replacement run-off Certificate for the premiums stated above. In this case, however, *We* may offer the *Company* a replacement run-off Certificate on such terms and conditions as *We* decide are appropriate and at our discretion.

If any such replacement Certificate is purchased, then:

- (i) it will have effect from the effective date of an occurrence as described in Section 8.3. of this Certificate; and
- (ii) it will only apply to *Wrongful Acts* actually or allegedly committed by *You* prior to the effective date of an occurrence as described in Section 8.3. of this Certificate; and
- (iii) We will refund the relevant proportion of the premium calculated pro rata as at the effective date of the merger, consolidation or acquisition (regardless of the provisions of Section 8.5 of this Certificate); and
- (iv) it may not be cancelled and the premium for it is not refundable (save that We may cancel it due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Company*); and
- (v) it will not provide Retirement Cover or a Discovery Period as provided for in Sections 2.3 and 2.4 of this Certificate (unless agreed by *Us* to the contrary).

## 2.6 Outside Directorship Cover

2.6.1 We will pay *Loss* as incurred by *You* or on your behalf in respect of a *Claim* made against *You* in *Your* capacity as a director, officer, trustee or governor of any other company, corporation or organisation provided that *You* hold or held that position at the specific request of the *Company*.

2.6.2 This cover is specifically in excess of any other insurance protecting *You* and/or in excess of any other indemnity available to *You* while holding such position. If, however, such other insurance is provided by *Us* then the total aggregate *Limit of Liability* for all *Loss* covered by this extension shall be reduced by the amount of the limit of liability of such other insurance.

2.6.3 This additional cover does not apply to:

- (a) positions held in the USA or Canada; or
- (b) positions held in any other company, corporation or organisation which has, has had, or to the knowledge of any person insured under this Certificate intends to have its securities traded in the USA or Canada.

If *You* hold any such positions then *You* can provide *Us* with further information relating to them and We may then agree at our absolute discretion to extend cover in return for the payment of additional premium and/or amendments to the terms of this Certificate.

## 2.7 Travel Costs Cover

We will pay reasonable travel costs and living expenses incurred by *You* when giving evidence to defend a *Claim* provided that We have consented in writing before such costs are incurred and subject to a sublimit of GBP 5,000 per individual and in the aggregate (which limit shall be part of and not in addition to the *Limit of Liability*).

## 2.8 Employment Practices Cover

We will pay *Loss* as incurred by *You* or on your behalf in respect of any *Claim* against *You* for an *Employment Practices Wrongful Act*.

We will pay *Loss* as incurred by the *Company* in respect of any *Claim* against the *Company* for an *Employment Practices Wrongful Act* up to a maximum limit of GBP250,000 in the aggregate for the *Certificate Period* (which limit shall be part of and not in addition to the *Limit of Liability*).

## 2.9 Official Investigation Costs

We will pay reasonable legal fees, costs and expenses incurred by *You* up to a maximum limit of GBP250,000 in the aggregate for the *Certificate Period* (which limit shall be part of and not in addition to the *Limit of Liability*) resulting from any legally required attendance by *You* at any official investigation, examination, inquiry or other similar proceeding ordered or commissioned by any official body or institution that is legally empowered to investigate the affairs of the *Company* provided that We have consented in writing to *You* incurring such *Costs* before they are incurred. It is agreed that We will not unreasonably withhold that consent.

If *You* believe that as a result of any such official investigation, examination, inquiry or other similar proceeding, circumstances exist which may reasonably be expected to give rise to a *Claim*, notice must be given to *Us* in accordance with Section 6 Claim Reporting – Condition Precedent of this Certificate.

### Section 3: Definitions

#### 3.1 *Certificate Period* means:

The period of time specified in Item 2 of the Schedule, or any other period agreed in writing by the *Company* and *Us*.

#### 3.2 *Claim* means:

- (a) any written demand made against *You* or the *Company* for monetary damages or other relief, including non-pecuniary relief; or
- (b) any allegation of a *Wrongful Act* or *Employment Practices Wrongful Act* communicated to *You* or the *Company*; or
- (c) any criminal, civil or arbitration proceedings (including extradition proceedings) against *You* or the *Company*; or
- (d) any regulatory or administrative proceedings or any other official investigation into the affairs of the *Company*. In the case of the *Company* cover shall be restricted to Health and Safety and employment related investigations as detailed in Section 1.2 (iv).

All *Claims* which arise out of or are attributable to or are in any way connected with a single *Wrongful Act* or a single *Employment Practices Wrongful Act* shall constitute a single *Claim* for the purposes of this Certificate.

#### 3.3 *Company* means:

The organisation named in Item 1 of the Schedule and any *Subsidiary* thereof.

#### 3.4 *Costs* means:

All reasonable and necessary fees, including disbursements, incurred by *You* or the *Company* or incurred on their behalf in the investigation, mitigation, defence, adjustment and appeals of any *Claim* (including the reasonable premium and cost required for a bail bond or other similar obligation) provided that *We* have given *Our* prior written consent to *You* or the *Company* incurring such *Costs*. *We* will not unreasonably withhold that consent.

*Costs* does not mean overhead or benefit expenses associated with *Your* salary, wages or fees.

#### 3.5 *Deductible* means:

The amount(s) stated in Item 4 of the Schedule. For the purposes of determining the applicable *Deductible* under Section 1.2 (i), the *Company* shall be deemed to have indemnified *You* to the extent that it is permitted to do so.

#### 3.6 *Employment Practices Wrongful Act* means:

Any actual or alleged unfair or wrongful dismissal, termination or discharge of employment (either actual or constructive, including breach of an implied contract), employment-related misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), employment-related humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the *Company*, its past, present or prospective employees or which relate to any other company, corporation or organisation covered under Section 2.4 of this Certificate and its past, present or prospective employees.

#### 3.7 *Limit of Liability* means:

The amount stated in Item 3 of the Schedule.

#### 3.8 *Loss* means:

Damages, judgement awards, settlement awards and *Costs*.

*Loss* also means:

- (a) punitive or exemplary damages or civil fines or penalties but only where these are legally insurable in the jurisdiction where a *Claim* is made; or
- (b) exemplary damages for libel and slander in respect of a *Claim* brought or maintained entirely outside the USA or Canada).

*Loss*, however, does not mean:

- (a) civil or criminal fines or penalties; or
- (b) taxes; or
- (c) matters which are uninsurable under the law applicable to this Certificate; or

- (d) employment-related benefits, share options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; or
- (e) any liability incurred to adapt any building or property for a disabled person or any liability relating to any educational, sensitivity or other corporate programme.

**3.9** *Notification* means:

Written notice of any *Claim* given to the nominee shown in Item 8 of the Schedule.

**3.10** *Pollutants* means:

Any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

**3.11** *Subsidiary* means:

Any company which the *Company* or a *Subsidiary* controls:

- (a) through holding a majority of the voting rights; or
- (b) through having the right to appoint or remove the majority of its board of directors; or
- (c) alone, or pursuant to a written agreement with other shareholders or members, a majority of the voting rights; or
- (d) through control of the composition of the board of directors.

Coverage is provided for any company which, prior to the date of inception of this Certificate, was a *Subsidiary* but is no longer a *Subsidiary* at the date of inception.

Coverage will cease as at the effective date of the sale or dissolution of any *Subsidiary* for any *Wrongful Act* or *Employment Practices Wrongful Act* committed after that date.

**3.12** *USA* means the United States of America, its territories, possessions and any state or political sub-division thereof.

**3.13** *We* or *Us* or *Our* means:

The Insurers named in Item 10 of the Schedule.

**3.14** *Wrongful Act* means:

- (a) any actual or alleged libel, slander, error, misstatement, misleading statement, misrepresentation, omission, neglect, breach of duty, breach of fiduciary duty, breach of trust, breach of warranty of authority or other act attempted or committed by the *Company* or by *You* when acting or serving in such capacity; or
- (b) any matter claimed against *You* solely by reason of *You* acting or serving in such capacity.

*Wrongful Act* does not mean an *Employment Practices Wrongful Act*.

**3.15** *You* or *Your* means:

Any natural person who is, was prior to or becomes during the *Certificate Period*:

- (a) an executive director, officer, manager or trustee of the *Company* or the equivalent in any other jurisdiction; or
- (b) a non-executive director, officer or trustee of the *Company* or the equivalent in any other jurisdiction; or
- (c) a shadow director of the *Company*, as defined in S.741 (2) of the Companies Act 1985 or the equivalent legislation in any other jurisdiction; or
- (d) a representative or appointee of the *Company* who is not included in Section 3.15(a) or (b) but only in respect of *Loss* that is covered under Section 2.6 of this Certificate; or
- (e) a person employed by the *Company* exercising controlled functions 1 to 20, as are more fully set out and described under the terms of the Financial Services & Markets Act 2000 (or any equivalent or similar statute in any jurisdiction) whilst they are performing such functions; or
- (f) an employee of the *Company* who:
  - (i) carries out a managerial or supervisory function for the *Company*; or
  - (ii) has a *Claim* made against them for an *Employment Practices Wrongful Act*; or
  - (iii) is joined as a party to any *Claim* against any other person defined in (a) to (e) above.

- (g) the legal representatives, heirs, assigns or estate of a person defined in another sub-paragraph of this Section in the event of that person's death, incapacity, insolvency or bankruptcy; or
- (h) the lawful spouse or domestic partner of a person defined in another sub-paragraph of this Section where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner (the spouse or domestic partner, however, is not insured under this Certificate in his or her own right).

The above definition does not include external auditors of the *Company*.

#### Section 4: Exclusions

We shall not be liable for *Loss* on account of any:

- 4.1 *Claims* arising from or attributable to any claim or circumstance notified to any certificate or policy of insurance which incepted prior to the inception of this Certificate or which arise from matters substantially the same as alleged or established in such claim or circumstance.
- 4.2 *Claims* arising from or attributable to proceedings which existed prior to or were pending at the earlier of (i) the inception date of this Certificate or (ii) the date of the first Certificate effected with *Us* and continually maintained with *Us* up to the inception date of this Certificate or (iii) any prior policy of insurance providing like coverage to this Certificate continually maintained up to the inception date of this Certificate, which *Claims* arise from matters substantially the same as alleged or established in such proceedings.
- 4.3 *Claims* for any actual or alleged violation of the responsibilities, obligations or duties imposed by any retirement or pension legislation anywhere in the world including but not limited to the Employee Retirement Income Security Act 1974 (USA) or *Claims* against *You* acting in the capacity as trustee, fiduciary or administrator of any pension or employee benefit scheme. It is agreed, however, that this exclusion shall apply only to a *Claim* that relates to any pension or employee benefit scheme that has been or is established, arranged, maintained or sponsored by the *Company* for the benefit of its own employees.
- 4.4 *Claims* arising from or attributable to:
  - (a) any criminal or dishonest act or omission; or
  - (b) any act or omission committed with the knowledge that it was in breach of any statute, contract, duty or other legal obligation; or
  - (c) the gain of any personal profit, remuneration or advantage to which *You* were not legally entitled including, but not limited to, profits made from the purchase or sale of the *Company's* securities within the meaning of Section 16(b) of the Securities Exchange Act 1934 (USA) and/or any amendment to or re-enactment thereof.

This exclusion shall only apply if the act, omission or profit is established by a court, tribunal or any other final adjudication or by admission.

- 4.5 *Claims* for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof. In relation to a *Claim* for an *Employment Practices Wrongful Act* only, this exclusion shall not, however, apply in respect of mental anguish or emotional distress or disturbance.
- 4.6 *Claims* arising from or attributable to:
  - (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
  - (b) any legal liability of whatsoever naturedirectly or indirectly caused by or contributed to by or arising from:
  - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 4.7 *Claims* arising from or attributable to:
  - (a) the actual, alleged or threatened discharge, dispersal, release or escape of *Pollutants* into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or

(b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*.

It is agreed, however, that this exclusion shall not apply to:

- (i) *Costs*; or
- (ii) *Claims* made against *You* by any shareholder of the *Company* either directly or derivatively

provided, however, that

- (i) on or before the earlier of (i) the inception date of this Certificate or (ii) the date of the first Certificate effected with *Us* and continually maintained with *Us* up to the inception date of this Certificate or (iii) any prior policy of insurance providing like coverage to this Certificate continually maintained up to the inception date of this Certificate, the *Company*, *You* or any person insured under this Certificate did not know of nor could have reasonably foreseen that there existed any situation, circumstance or *Wrongful Act* which could give rise to a *Claim*; and
- (ii) the incident(s) giving rise to the *Claim* occurred entirely outside the *USA* or *Canada* and the *Claim* is brought or maintained entirely outside the *USA* or *Canada*.

**4.8** *Claims* for *You*, the *Company* or any person insured under this Certificate carrying out, or failing to carry out, professional services.

**4.9** *Claims* 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 *Loss*:

- (a) 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
- (b) any act of terrorism.

For the purposes of this exclusion, 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 of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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 exclusion also excludes any *Loss* on account of any *Claim* 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 (a) and/or (b) above.

If We allege that by reason of this exclusion any *Loss* is not covered by this insurance, the burden of proving the contrary shall be upon *You* and/or the *Company*.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**4.10** *Claims* arising from or attributable to any actual or alleged contractual liability of the *Company* under any express or implied contract or agreement provided, however, this exclusion shall not apply to a *Claim* for an *Employment Practices Wrongful Act* to the extent the *Company* would have had such liability in the absence of such contract or agreement.

This exclusion shall only apply to the *Company* in respect of any *Claim* for a *Wrongful Act*.

**4.11** *Claims* arising from or attributable to:

- (a) any public sale or public issue of any shares or other securities or similar instruments of the *Company*; or
- (b) the preparation or release of any prospectus or offering document relating to any public sale or public issue of any shares or other securities or similar instruments of the *Company*.

**4.12** *Claims* brought in the jurisdiction of the *USA* or *Canada* nor any *Claim* brought elsewhere to enforce a judgement in the *USA* or *Canada* whether by way of reciprocal agreement or otherwise.

**4.13** *Claims* arising from or attributable to:

- (a) intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret; or
- (b) any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, business competition, unfair trade practices or tortious interference in any other party's business or contractual relationships; or

- (c) fines or penalties or non-monetary relief except for (i) any securities *Claim* or (ii) *Claims* by any regulatory body or authority in the United Kingdom relating to or falling within any health and safety legislation.

This exclusion shall only apply to the *Company* in respect of any *Claim* for a *Wrongful Act*.

## Section 5: Limit of Liability

- 5.1 The *Limit of Liability* is the total aggregate limit of our liability in respect of all *Loss* in respect of all *Claims* made during the *Certificate Period* (including any *Discovery Period*, if applicable) with the exception of any payments made under the Public Relations Cover detailed in Section 2.2.
- 5.2 We are only liable to pay *Loss* as incurred by *You* or the *Company* insofar as it exceeds the amount of the *Deductible*. However if:
  - (a) there is a judgement which determines that no person or *Company* insured under this Certificate is liable and all avenues of appeal have been waived or exhausted; or
  - (b) there is a dismissal of the proceedings without any payment being made by or on behalf of any person or *Company* insured under this Certificate,then no *Deductible* will apply and We agree to reimburse any payments made in respect of the *Deductible* within 60 days.
- 5.3 We will not pay *Costs* if one or more of the Exclusions detailed in Section 4 applies to the *Claim* subject otherwise to the provisions of Sections 4.4, 7.1 and 8.2.

## Section 6: Claim Reporting – Condition Precedent

- 6.1 As a condition precedent to our liability under this Certificate, *You* or the *Company* must provide *Notification* as soon as practicable.
- 6.2 If during the *Certificate Period* *You* or the *Company* first become aware of a *Wrongful Act* or an *Employment Practices Wrongful Act* or first become aware of a situation that *You* or the *Company* consider may become a *Claim*, *You* or the *Company* must provide *Notification* as soon as practicable, in which case any *Claim* that is subsequently made will be treated as having been made during the *Certificate Period*.

## Section 7: Defence and Settlement

- 7.1 We will pay *Costs* on an as incurred basis in excess of the *Deductible* prior to final determination or final adjudication or up until the time that a *Claim* is withdrawn. If at any time a *Claim* is deemed not to be covered under this Certificate or is found to be excluded then all such *Costs* must be returned to *Us* on demand.
- 7.2 *You* and the *Company* shall have the right and duty to defend and contest any *Claim*. We shall have the right to effectively associate with *You* and the *Company* in the defence and settlement of any *Claim* that appears reasonably likely to involve *Us*. This will include, but not be limited to, effectively associating in the negotiation of any settlement.
- 7.3 *You* and the *Company* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgement or incur any *Costs* without our written consent as a condition precedent to our liability for *Loss* arising out of the *Claim*. Only those settlements, stipulated judgements and *Costs* to which We have consented shall be recoverable as *Loss* under this Certificate. Our consent shall not be unreasonably withheld provided that We shall be entitled to effectively assess the defence and negotiation of any settlement of any *Claim* in order to reach a decision as to reasonableness.
- 7.4 *You* and the *Company* shall give *Us* full co-operation and any information that We may reasonably require as a condition precedent to our liability for *Loss* arising out of a *Claim*.
- 7.5 In the event that a dispute arises as to whether or not to contest any legal proceedings, neither We nor *You* (or the *Company*) shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (or an equivalent or like person to be mutually agreed upon) shall advise that the proceedings should be contested. We will bear the cost of obtaining the advice of the Queen's Counsel (or an equivalent or like person to be mutually agreed upon).

## Section 8: General Conditions

### 8.1 Automatic Acquisition

If the *Company* creates or acquires a *Subsidiary* during the *Certificate Period* then *Wrongful Acts* committed after the effective date of acquisition will automatically attract coverage under this Certificate provided that:

- (a) the total assets of the new *Subsidiary* do not exceed 20% of the total consolidated assets of the *Company* as

stated in the most recent audited financial statement of the *Company* as at the inception date of this Certificate; and

- (b) the new *Subsidiary* is not domiciled in the *USA* or *Canada*; and
- (c) the new *Subsidiary* has not had, does not have, nor intends to have its securities traded in the *USA*; and
- (d) the new *Subsidiary* does not have an office or offices in the *USA* or *Canada* or those offices do not cause the total gross assets or employees of the *Company* in the *USA* or *Canada* to increase by more than 20%.

## 8.2 Allocation

Where a *Claim* involves matters which give rise to *Loss* covered by this Certificate and matters which do not, then *We* will use *Our* best efforts to agree upon a fair and proper allocation of the proportion of the *Loss* covered under this Certificate. Only *Loss* incurred by *You* or the *Company*, and in the case of *Costs* those which are directly attributable to both *You* or the *Company's* defence of such *Claim*, are covered, subject always to the terms and conditions of this Certificate.

If an allocation cannot be agreed then it shall be determined by a Queen's Counsel (or an equivalent or like person to be mutually agreed upon). Such determination will be based upon written submissions only and will be final and binding. Pending that determination *We* may at *Our* sole discretion meet the *Loss* on an interim basis. After the allocation has been determined, *You* or the *Company* (whichever is appropriate) or both *You* and the *Company* will refund to *Us* any *Loss* which *We* have paid that exceeds the entitlement under this Certificate.

The costs of any reference to a Queen's Counsel (or an equivalent or like person to be mutually agreed upon) under this clause shall be borne by *Us*.

## 8.3 Merger/Acquisition

If the *Company* is merged, consolidated with or acquired by another entity which thereby obtains ownership or control of 50% or more of the share capital or securities which include the right to vote for the election of board members, this Certificate will only apply to a *Wrongful Act* or an *Employment Practices Wrongful Act* committed prior to the effective date of such transaction.

## 8.4 Termination/Cancellation

The *Company* may cancel this Certificate by giving notice in writing to *Us* at any time. If the *Company* cancels this Certificate, *We* will retain the proportion of the premium calculated pro rata as at the date of cancellation plus fifteen percent (15%) of that amount.

*We* may cancel this Certificate due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Company*.

If a liquidator, receiver or administrative receiver cancels this Certificate on behalf of the *Company* and we have not otherwise cancelled this Certificate due to non-payment of premium, it is agreed that the Certificate will remain in force until the expiry of the *Certificate Period* stated in Item 2 of the Schedule provided, however, that coverage shall only be available to *You* to the extent that *You* are a non-executive director of the *Company* as described in Section 3.15 (b) of the Certificate.

This Certificate shall terminate at the expiry of the *Certificate Period* stated in Item 2 of the Schedule.

This Certificate may otherwise be cancelled in writing by mutual agreement of the *Company* and *Us*.

## 8.5 Other Insurance

This Certificate shall apply only in excess of any other valid insurance, with the sole exception of any Certificate written as specific excess insurance over the *Limit of Liability* provided by this Certificate.

## 8.6 Governing Law and Jurisdiction

This Certificate shall be governed by and construed in accordance with the laws of the country in which the *Company* is incorporated and it is agreed that the courts of that country shall have exclusive jurisdiction to determine any disputes which arise in relation to this Certificate.

## 8.7 Assignment of Certificate

This Certificate and any rights hereunder cannot be assigned without *Our* written consent.

## 8.8 Severability of Exclusions

For the purposes of determining the application of Exclusion 4.4, no fact pertaining to or knowledge possessed by *You* or the *Company* shall be imputed to any other *Company* or person insured under this Certificate and vice versa.

## 8.9 Severability of Proposal

The Proposal for this insurance shall be construed as a separate Proposal by each person insured under this Certificate. With respect to the declarations and statements contained in the Proposal, no statement in the Proposal or knowledge possessed by *You* shall be imputed to any other person insured under this Certificate and vice versa.

## 8.10 Unintentional Non-Disclosure and Late Notification

8.10.1 In the event of non-disclosure or misrepresentation of information to *Us*, then *We* agree not to avoid this Certificate provided that:

- (i) *You* or the *Company* are able to establish to the satisfaction of *Us* that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive; and
- (ii) *We* shall be entitled to amend the terms, conditions and premium for this Certificate upon review of any information that has not (but should have) been disclosed to *Us* or upon re-review of any information that has been misrepresented to *Us*.

8.10.2 In the event that *You* or the *Company* fail to comply with the provisions of Section 6: Claim Reporting - Condition Precedent of this Certificate, then *We* agree not to avoid this Certificate or avoid a *Claim*. If, however, *We* believe that such failure has prejudiced our right to effectively associate with *You* and the *Company* in the defence and settlement of any *Claim*, then *We* reserve the right to deduct from any *Loss* an amount that *We* believe would not have been payable had such prejudice not occurred.

In such event, *We* agree with *You* that we shall both use our best efforts to agree upon a fair and proper amount of the proportion of any *Loss* that shall be deducted. If, however, such an amount cannot be agreed then it shall be determined by a Queen's Counsel (or an equivalent or like person to be mutually agreed upon). Such determination will be based upon written submissions only and will be final and binding.

The costs of any reference to a Queen's Counsel (or an equivalent or like person to be mutually agreed upon) under this section shall be borne by *Us*.

## 8.11 Subrogation and Assignment of Rights

If any payments are made under this Certificate, *We* shall be subrogated to all rights of recovery in respect of such payments. In addition, *You* or the *Company* shall upon request execute all documentation that may be necessary to enable *Us* to bring an action or suit in *Your* name or that of the *Company*. Any recovery received shall be applied first against any *Loss* insofar as it exceeds the *Limit of Liability*, then against any payment made by *Us*, and finally against the *Deductible*. *We* will not subrogate against any person insured under this Certificate unless that person is found to have committed a criminal act by final determination or by final adjudication.

## 8.12 Singular and Plural

Any reference to the singular shall include the plural and vice versa.

## 8.13 Authorisation of the Company

The *Company* shall act as agent on *Your* behalf in respect of all matters of any nature relating to or affecting this Certificate. *We* shall be entitled to treat the *Company* as having such authority for all purposes connected with this Certificate.

## 8.14 Several Liability of Insurers

The obligations of the Insurers (where there is more than one) subscribing to this contract of insurance are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

## 8.15 Currency Equivalent

It is agreed that wherever an amount appears in this Certificate in GBP it shall be deemed to have the following words added after the amount "(or the equivalent amount in any other currency)".

## 8.16 Contracts (Rights of Third Parties) Act 1999 Clause

The contract evidenced by this Certificate does not, and is not intended to, confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 (or any equivalent or similar statute in any jurisdiction) by any person who is not a party to the contract and the parties to the contract evidenced by this Certificate reserve the right to amend or rescind the contract without giving notice to, or requiring the consent of, any third party.

## Section 9: Declarations

It is understood and agreed that all statements and declarations made to *Us* have been relied upon by *Us* and are the basis of this Certificate and shall be deemed to be incorporated into and form part of this Certificate.