



# @daptive D&O Liability

**Chubb Insurance Company of Europe S.A.**  
(herein called "the Company")

Policy Number:

## Declarations

Item 1. **Policyholder:**  
Address:

Item 2. **Policy Period:** From:  
To: both days inclusive  
Local time at the address shown in Item 1.

Item 3. Limits of Liability:

Section 2 Directors & Officers Liability:

(A) Each **Policy Period** £

Directors & Officers Liability – Insuring  
Clause 2.1 Additional Limit of Liability (see  
Section 2.11)

(B) Each **Policy Period** £1,000,000 or 25% of the Limit of  
Liability in Item 3 (A) above, whichever  
is the lesser

Section 3 Corporate Legal Liability:

(C) Each **Policy Period** £

Item 4. Sublimits of Liability:

Section 2 Directors and Officers Liability:

**Defence Costs for Pollution** sublimit:

(A) Each **Policy Period** £250,000 or 10% of the Limit of  
Liability in Item 3 (A) above, whichever  
is the lesser

**Attendance Compensation** sublimit:

(B) Each **Policy Period** £10,000

Section 3. Corporate Legal Liability:

Intellectual Property **Defence Costs** sublimit:

(C) Each **Policy Period** £



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Public Offering **Defence Costs** sublimit:

(D) Each **Policy Period** £

Contract Claim **Defence Costs** sublimit:

(E) Each **Policy Period** £

**Pollution Defence Costs** sublimit:

(F) Each **Policy Period** £

**HS Representation Expenses** sublimit:

(G) Each **Policy Period** £

Item 5. **Defence Costs** in addition to the Limit of Liability:

Section 2. Directors & Officers Liability:

Each **Policy Period** 10% of the Limit of Liability in Item 3(A) above

Item 6. Deductibles:

Section 2 Directors & Officers Liability:

(A) Deductible for **Claims** brought and maintained entirely outside the **U.S.A.** £ nil

(B) Deductible for **Claims** brought or maintained in whole or in part in the **U.S.A.** \$25,000

The above Section 2 Deductibles apply only to **Loss** for which an **Insured Person** is **Indemnifiable**.

Section 3 Corporate Legal Liability:

(C) Deductible wherever the **Claim** is brought or maintained £5,000

Item 7. Pending or Prior Dates:

(A) Section 2 (Directors and Officers Liability):

(B) Section 3 (Corporate Legal Liability):

**THIS IS A CLAIMS-MADE POLICY. EXCEPT AS OTHERWISE PROVIDED, IT COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED PERSONS DURING THE POLICY PERIOD.**

For and on behalf of  
Chubb Insurance Company of Europe S.A.

Date



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

## Section 1: General Terms

### Application of Terms

- 1.1 The General Terms of this Section 1 apply to all Sections of this Policy, subject to the provisions of Section 1.2 below. The terms of each other Section of this Policy apply only to that Section and shall not be construed to apply to any other Section.
- 1.2 Where a provision in this Section 1 uses a word in bold which is defined in another Section, the provision shall, as applied to that other Section, be construed with the word in bold bearing the meaning given in that other Section.

### Definitions

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

**Cover Sections** means Section 2 (Directors and Officers Liability) and Section 3 (Corporate Legal Liability).

**Policyholder** means the organisation stated in Item 1 of the Declarations.

**Policy Period** means the period of time stated in Item 2 of the Declarations but subject to prior termination when cover terminates in accordance with Section 1.13 below. If this period is less than or greater than one year, then each Limit of Liability stated in Item 3 of the Declarations, together with any applicable additional limit of liability stated in Item 3(B) or Item 5, shall, in combination, constitute the **Company's** maximum Limit of Liability for the entire period under the Section of this Policy to which that Limit of Liability relates.

**Pollutants** means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products and any noise.

**Pollution** means:

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

**Property Damage** means physical damage to or destruction or loss of use of any tangible property.

**U.S.A.** means the United States of America, its territories and possessions and any state or political subdivision thereof.

### Limits of Liability and Deductible

- 1.4 The Limits of Liability and Deductibles shown in the Declarations of this Policy are separate Limits of Liability and separate Deductibles pertaining to each Section. No payment of any **Loss** under one Section of this Policy shall reduce or otherwise impair the **Company's** liability under any other Section. The application of a Deductible to **Loss** under one Section of this Policy shall not reduce the Deductible under any other Section.



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### Reporting and Notice

- 1.5 It is a condition precedent to the **Company's** liability under this Policy for **Loss** on account of a **Claim** that the **Company** is given written notice as soon as practicable of such **Claim**.

If, during the **Policy Period**, an **Insured** becomes aware of circumstances which are likely to give rise to a **Claim** and gives written notice of such circumstances to the **Company**, then any **Claims** subsequently arising from such circumstances shall be deemed to have been first made or instituted during the **Policy Period**. Circumstances shall not be regarded as notified unless the written notice expressly identifies the **Wrongful Act** and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the **Insured** first became aware of the circumstances.

Each **Insured** shall, as a condition precedent to the **Company's** liability under this Policy for **Loss** on account of a **Claim**, give to the **Company** all such information and co-operation as the **Company** may reasonably require, including but not limited to a description of the **Claim**, the nature of the alleged **Wrongful Act** and the date it was committed, the nature of the alleged damage, the names of the claimants and defendants and the manner in which the **Insured** first became aware of the **Claim**.

Notice to the **Company** under this Policy shall be given in writing addressed to:

Notice of **Claim** or circumstances: Claims Department  
Other requests: Executive Protection

Chubb Insurance Company of Europe S.A.  
106 Fenchurch Street  
London EC3M 5NB

Notice shall be effective on the date of receipt by the **Company** at such address.

### Other Insurance

- 1.6 If **Loss** is insured under any other valid policy, then any Section of this Policy which covers that **Loss** shall do so, subject to its terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in that Section.

### Territory

- 1.7 Subject to all other terms of this Policy, cover shall extend to **Loss** on account of **Claims** brought or maintained in any jurisdiction.

### Subrogation

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

### Valuation and Foreign Currency

- 1.9 **Loss** which is not in the currency stated in Item 3 of the Declarations of this Policy or any endorsements thereto shall be converted to and paid in the currency of this Policy or any endorsements thereto based upon the rate of exchange published in The Financial Times on the date the final judgement is reached, the amount of the settlement is agreed upon or **Defence Costs** paid or any other element of **Loss** is due, respectively.



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### Authorisation Clause

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

### Alteration and Assignment

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

### Rights of Action

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

### Termination

- 1.13 Cover under this Policy shall terminate at the earliest of the following times:
- (a) 7 days after the receipt by the **Policyholder** of a written notice of termination from the **Company** for non-payment of premium;
  - (b) expiration of the **Policy Period** (but expiration of the **Policy Period** shall not terminate cover under an obtained extended reporting period);
  - (c) receipt by the **Company** of written notice of termination from the **Policyholder**; and
  - (d) such other time as may be agreed upon by the **Company** and the **Policyholder** in writing.

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

- (i) computed at customary short rates, if this Policy is terminated by the **Policyholder** or if an obtained extended reporting period comes to an end as a result of another insurance policy being taken out and the **Policyholder** gives the **Company** written notice that such other insurance policy has been taken out; or
- (ii) computed pro-rata, if cover under this Policy is terminated other than by the **Policyholder**.

### Choice of Law and Forum

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



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### Section 2: Directors & Officers Liability

#### Insuring Clause 2.1: Directors & Officers Liability

- 2.1 The **Company** shall pay, on behalf of each **Insured Person**, **Loss** to the extent they are not **Indemnifiable** for that **Loss**.

#### Insuring Clause 2.2: Organisation Indemnification

- 2.2 The **Company** shall pay, on behalf of each **Organisation**, **Loss** to the extent its **Insured Persons** are **Indemnifiable** for that **Loss**.

#### Insuring Clause 2.3: Legal Representation Expenses

- 2.3 The **Company** shall pay, on behalf of each **Insured Person**, **Legal Representation Expenses**.

#### Insuring Clause 2.4: Compensation for Court Attendance and Staff Disruption

- 2.4 With regard to each **Claim**, **Loss** on account of which is covered by this Section 2:
- (a) the **Company** shall, if a director, officer or employee of an **Organisation** attends a court or arbitration hearing as a witness, compensate for that person being so occupied, by paying £150 for each day on which that person attends as a witness;
  - (b) the **Company** shall, if a director, officer or employee of an **Organisation** is interviewed by, and in the physical presence of, the lawyers conducting the defence of the **Claim** for the purpose of composing a witness statement, compensate for that person being so occupied, by paying £150 for each day on which that person is so interviewed;
  - (c) the **Company** shall, if a director, officer or employee of an **Organisation** is reasonably needed to attend a conference or consultation with a barrister, compensate for that person being so occupied, by paying £150 for each day on which that person attends such conference or consultation; and
  - (d) the **Company** shall, if a director, officer or employee of an **Organisation** attends a court or arbitration hearing as observer, compensate for that person being so occupied, by paying £150 for each day on which that person attends as observer, provided that the **Company** shall only be liable to compensate for the occupation of one observer for all **Organisations** together per day.

The **Company** shall pay the compensation to the **Policyholder**.

Compensation provided for by this Section 2.4 in respect of a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a **Claim**.

#### Definitions

- 2.5 When used in bold type in this Section 2:

**Application** means:

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



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process of applying for this Policy;

- (c) each **Organisation's** annual reports and financial statements, filed, at any time prior to the time the contract evidenced by this Policy was entered into, with the company, commercial or similar registry at which that **Organisation** is registered; and
- (d) all financial information made publicly available by any **Organisation**, or filed with any regulator or listing authority, at any time prior to the time the contract evidenced by this Policy was entered into.

**Approved Person** means a person whose performance of a **Controlled Function** as an employee of an **Organisation** has been approved by the Financial Services Authority pursuant to Part V of the Financial Services and Markets Act 2000.

**Attendance Compensation** means compensation provided for by Insuring Clause 2.4 above.

**Claim** means:

- (a) with respect to Insuring Clauses 2.1 and 2.2 only :
  - (i) a written demand for specific monetary compensation or specific non-pecuniary relief based upon facts or circumstances that would create a cause of action in law;
  - (ii) a civil proceeding including third party proceeding, counterclaim or arbitration proceeding;
  - (iii) a criminal proceeding;
  - (iv) an extradition proceeding; or
  - (v) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges,

made against an **Insured Person**, alleging a **Wrongful Act**.

- (b) with respect to Insuring Clause 2.3 only, a **Formal Investigation**.

**Controlled Function** means a controlled function amongst those numbered 1 to 20 specified by the Financial Services Authority in its Table of Controlled Functions in its Supervision Manual at 10.4.5 in Block 3 of its Handbook.

**Defence Costs** means that part of **Loss** consisting of reasonable and necessary costs, expenses, charges and fees (including but not limited to lawyers' fees and experts' fees) incurred in defending or investigating a **Claim** (as defined in (a) in the definition of **Claim**) first made during the **Policy Period** (other than internal corporate expenses of an **Organisation**). **Defence Costs** shall also include premium paid for insurance instruments or for bonds which are required in order to institute an appeal but without any obligation to furnish or procure such insurance instruments or bonds.

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

**Formal Investigation** means a formal investigative inquiry which is:

- (a) into the conduct, in their **Insured Capacity**, of an **Insured Person**; and
- (b) instituted by a governmental, regulatory, professional or statutory body with powers to investigate



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that **Insured Person** or powers to investigate the affairs of that **Insured Person's Organisation**.

**Indemnifiable** means, disregarding all restrictions in contract or in an **Organisation's** or **Outside Entity's** constitution, memorandum or articles of association, bylaws, shareholder resolutions, or board or other governing body resolutions, not prevented by law or insolvency from being indemnified or reimbursed by an **Organisation** or **Outside Entity**.

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

**Insured Capacity** means:

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

**Insured Person** means a natural person who has been, now is or shall become:

- (a) director or officer, or the equivalent in any jurisdiction, of an **Organisation**;
- (b) a **Shadow Director** of an **Organisation** by virtue of being a director, officer or employee of another **Organisation**; or
- (c) an employee of an **Organisation**, but only:
  - (i) with respect to an **Employment Claim**;
  - (ii) to the extent that such employee is acting in any managerial or supervisory capacity or **Outside Directorship**;
  - (iii) with respect to any **Claim** in which such employee is named as a co-defendant with a director or officer, or the equivalent in any jurisdiction, of an **Organisation**; or
  - (iv) to the extent that such employee is acting as an **Approved Person** and is performing a **Controlled Function** for which the employee has been approved by the Financial Services Authority.

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

**Legal Representation Expenses** means that part of **Loss** which consists of reasonable and necessary legal representation fees and related professional charges which an **Insured Person** incurs personally in their representation at a **Formal Investigation**:

- (a) which is first instituted during the **Policy Period**; and
- (b) at which the attendance of that **Insured Person** is required by the body which instituted it,

but which are only incurred after that **Insured Person** has been notified in writing by that body that it is looking into whether or not that **Insured Person** is culpable of misconduct.

**Loss** means the amount which an **Insured Person** is legally and personally liable to pay on account of a **Claim** first made or instituted during the **Policy Period** including:



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- (a) **Defence Costs;**
- (b) **Legal Representation Expenses;** and
- (c) awards of damages, including punitive, exemplary or aggravated damages, the multiple portion of any multiplied damages award, judgements, awards of claimant's costs and sums payable pursuant to any settlements.

**Loss** does not include:

- (i) matters uninsurable under English law;
- (ii) fines or penalties;
- (iii) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award, in any **Employment Claim** unless awarded for employment-related defamation; or
- (iv) any amount for which the **Insured Person** is absolved from payment other than by being **Indemnifiable**.

**Non-U.S.A. I v I Claim** means a **Claim**:

- (a) which is by or on behalf of any **Insured**; or
- (b) which arises out of an **Outside Directorship** and is by or on behalf of the **Outside Entity** in which that **Outside Directorship** is or was held or any director, officer, trustee, governor, or equivalent in any jurisdiction, of that **Outside Entity**,

but which is not a **U.S.A. Claim**.

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

**Outside Directorship** means the position of director, officer, trustee, governor, or the equivalent in any jurisdiction, held by an **Insured Person** in their **Insured Capacity** in an **Outside Entity** provided that such position is assumed and maintained at the specific request of an **Organisation**.

**Outside Entity** means an organisation:

- (a) in which an **Organisation** holds any issued share; or
- (b) which is a tax-exempt non-profit organisation, a tax-exempt trade association or a registered charity.

**Outside Entity** does not include an organisation:

- (i) which is within the definition of **Organisation**; or
- (ii) which has any of its debt securities or equity securities publicly traded in the **U.S.A.** unless included by endorsement.

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

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

- (a) other than disqualification, on grounds relating to fitness or propriety, from holding office or from managing a company; and



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- (b) other than a circumstance described in Section 2.9(a) or 2.9(b) below.

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

**Shareholder Derivative Action** means a **Claim** brought on behalf of an **Organisation** by a shareholder of the **Organisation** in his capacity as such and not at or with the instigation or solicitation of an **Insured**.

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

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

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

**Wrongful Act** means any wrongful act or omission, error, misstatement, misleading statement, neglect or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured Person**, individually or otherwise, in their **Insured Capacity**, or any matter claimed against them solely by reason of their serving in such **Insured Capacity**.

### Spouses, Partners and Estates

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

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

### Subsidiaries

2.7 Should an organisation cease to be a **Subsidiary** before or during the **Policy Period**, there shall nonetheless be cover under this Section 2 with respect to such **Subsidiary** and its **Insured Persons**.

With respect to each **Subsidiary** and its **Insured Persons**, cover under this Section 2 shall apply only for **Wrongful Acts**, and (as concerns **Formal Investigations**) conduct, at a time when the **Subsidiary** is a **Subsidiary**. The **Company** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Company** may require.

### Acquisition or Creation of Another Organisation

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

- (a) acquires securities or voting rights in another organisation which as a result of such acquisition becomes a **Subsidiary**;
- (b) creates an organisation which as a result of such creation becomes a **Subsidiary**; or



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- (c) acquires any organisation by merger into or consolidation with that **Organisation**,

then the organisation and its **Insured Persons** shall automatically become **Insureds** under this Section 2 with effect from the date of such acquisition or creation but only with respect to **Wrongful Acts** after, and (as concerns **Formal Investigations**) conduct after, such acquisition or creation. The **Company** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Company** may require.

However, in the event of an acquisition described in (a) or (c) immediately above, if such organisation:

- (i) has gross consolidated assets that increase the total consolidated assets of all the **Organisations** together by more than 25% as recorded in the latest annual audited report and consolidated accounts of the **Policyholder**; or
- (ii) has any of its debt securities or equity securities listed on any exchange in the **U.S.A.**,

then:

- for that organisation and its **Insured Persons** to become **Insureds** under this Section 2, the **Policyholder** must give written notice of that acquisition, and such information as the **Company** may require, to the **Company** within 90 days following that acquisition, whereupon they shall become **Insureds** under this Section 2 with effect from the date of that acquisition (but only with respect to **Wrongful Acts** after, and (as concerns **Formal Investigations**) conduct after, that acquisition); and
- the **Company** shall have the right to amend the terms of this Section 2, including charging an additional premium and including terminating cover for that organisation and its **Insured Persons**, but only with effect from 90 days after that acquisition.

### Acquisition of the Policyholder

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

- (a) the **Policyholder** merges into or consolidates with another organisation (other than in accordance with Section 2.8(c) above); or
- (b) a person or persons acting in concert acquires ownership or voting control of more than 50% of the outstanding securities representing the present right to vote for the election of the members of the board of directors of the **Policyholder**,

cover for the **Organisations** and their **Insured Persons** under this Section 2 shall continue until the end of the **Policy Period**, but only for **Wrongful Acts** prior to, and (as concerns **Formal Investigations**) conduct prior to, such merger, consolidation or acquisition.

### Offerings of Securities

2.10 If, during the **Policy Period**, an **Organisation** makes a public offering of its debt securities or equity securities, the **Policyholder** shall provide the **Company** with the prospectus or offering document no later than 30 days prior to the offering taking place together with any additional information the **Company** may require. The **Company** shall have the right to amend the terms of this Section 2 including charging an additional premium.

The **Company** shall provide the **Policyholder** with a quote for cover in respect of that offering, to be on such terms and for such additional premium as the **Company** shall, in its entire discretion, decide. Whether or not the **Policyholder** complies with the provisions of the first paragraph of this Section 2.10 and



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accepts the quote provided by the **Company**, there shall, subject to all other terms of this Section 2, be covered under this Section 2 for **Claims** by a securityholder in respect of a failure to carry out or complete the offering.

### Additional Limit for Unindemnifiable Loss

- 2.11 Notwithstanding the provisions of the first paragraph of Section 2.20 below, the **Company** shall, upon exhaustion of the Limit of Liability for the **Policy Period** stated in Item 3(A) of the Declarations, have a further liability for **Loss** provided that:
- (a) that further liability shall only be for **Loss** covered under Insuring Clause 2.1;
  - (b) the **Company** shall not have that further liability until all insurance written specifically excess of this Section 2 has been exhausted by payment of matters covered under such excess insurance; and
  - (c) the maximum amount of that further liability on account of all **Claims** first made during the **Policy Period**, whether involving one or any number of **Insureds**, shall not exceed the Insuring Clause 2.1 Additional Limit of Liability for each **Policy Period** stated in Item 3(B) of the Declarations.

### Deductible Waiver

- 2.12 Any **Defence Costs** within the Deductible stated in Item 6(A) or 6(B) of the Declarations which would otherwise be covered and which are funded by an **Insured** on account of a **Claim** shall be reimbursed by the **Company**, if a final adjudication or a complete and final settlement exonerates all **Insureds** in such **Claim** from liability and imposes no remedy.

### Emergency Defence Costs

- 2.13 Notwithstanding the provisions of the fifth paragraph of Section 2.24 below, if, because of an emergency, the **Company's** prior written consent to incurring **Defence Costs** or **Legal Representation Expenses** on account of a **Claim** cannot be requested, **Defence Costs** or **Legal Representation Expenses** can be incurred without that consent for defence or investigation work performed during the period of 14 days immediately following the date on which the **Claim** was first made or instituted.

### Severability of Application and Non-avoidance

- 2.14 For purposes of determining cover under this Section 2, no knowledge of one **Insured Person** shall be imputed to any other **Insured Person** with respect to statements and information in the **Application**.

The **Insureds** acknowledge and agree that, in issuing this Section 2 to the **Policyholder**, the **Company** has relied upon the material statements and information in the **Application**. The **Company** shall not avoid or rescind this Section 2 for any misrepresentation or for any non-disclosure (whether such misrepresentation or non-disclosure is innocent, negligent, fraudulent or otherwise).

However:

- (a) in the event of misrepresentation or non-disclosure which would otherwise entitle the **Company** to avoid or rescind this Section 2 as against one or more **Insureds**, no **Insured Person** who, at the time the contract evidenced by this Policy was entered into:
  - (i) knew the true position with regard to the facts or matters misrepresented to the **Company** or knew any of the non-disclosed facts; and
  - (ii) knew that the **Policyholder** was applying for this Policy,



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and no **Organisation** by which that **Insured Person** is **Indemnifiable**, shall have cover under this Section 2 for any **Loss** of that **Insured Person** on account of a **Claim** based upon, arising from or in consequence of the true position or any of the non-disclosed facts; and

- (b) in the event of any fraudulent or dishonest act by an **Insured** which was not disclosed to the **Company** before the contract evidenced by this Policy was entered into, but which, had that **Insured** known that a proposal for this Policy was being made, should have been so disclosed, there shall be no cover under this Policy for any **Loss** of that **Insured**.

### Extended Reporting Period

- 2.15 (a) Should the **Company**, other than for non-payment of premium, or the **Policyholder** refuse to renew this Section 2:
  - (i) the **Policyholder** and the **Insured Persons** may elect to obtain an extended reporting period of 1 year for 100% of the Section 2 annual premium or of 3 years for 200% of the Section 2 annual premium, provided that written notice of such election and payment of the additional premium are received by the **Company** within 60 days following the expiry of the **Policy Period** and provided that neither of the circumstances described in Section 2.9(a) or 2.9(b) above has arisen; this extended reporting period shall commence from the expiry date of the **Policy Period** and shall apply only to **Wrongful Acts** prior to, and (as concerns **Formal Investigations**) conduct prior to, that date; and
  - (ii) the **Retired Insured Persons** shall obtain an extended reporting period of 6 years; this extended reporting period shall commence from the expiry date of the **Policy Period** and shall, for each **Retired Insured Person**, apply only to **Wrongful Acts** prior to, and (as concerns **Formal Investigations**) conduct prior to, the date on which that **Retired Insured Person** became a **Retired Insured Person**.
- (b) If, during the **Policy Period**, either of the circumstances described in Section 2.9(a) or 2.9(b) above arises, the **Policyholder** and the **Insured Persons** may elect to obtain an extended reporting period of 3 years for 245% of the Section 2 annual premium, provided that written notice of such election and payment of the additional premium are received by the **Company** within 60 days following that 2.9(a) or 2.9(b) circumstance arising; this extended reporting period shall commence from the date at which that 2.9(a) or 2.9(b) circumstance arises and shall apply only to **Wrongful Acts** prior to, and (as concerns **Formal Investigations**) conduct prior to, that date.
- (c) If, before or during an extended reporting period obtainable or obtained under Section 2.15(a) or 2.15(b) above, any **Organisation** takes out any other insurance policy which affords directors and officers liability cover (whether or not equivalent to this Section 2 in cover), that extended reporting period shall then come to an end (or, if not yet obtained, cease to be obtainable).
- (d) A **Claim** first made or instituted during an obtained extended reporting period shall be deemed to have been first made or instituted during the **Policy Period**.

### Outside Directorship Liability Extension

- 2.16 Subject to the other terms of this Policy, cover under Insuring Clauses 2.1, 2.2 and 2.3 is extended to cover **Loss** arising out of an **Outside Directorship** provided however that:
  - (a) the **Company's** liability for each and every **Claim** shall apply only to that part of the **Loss** which is excess of:
    - (i) all other insurance payable;



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- (ii) the amount of the **Loss** for which the **Insured Person** serving in such **Outside Directorship** is **Indemnifiable** by the **Outside Entity**; and
- (iii) the applicable Deductible for Section 2 stated in Item 6 of the Declarations; and
- (b) if the **Insured Person** is **Indemnifiable** by their **Organisation** for the **Loss** and their **Organisation** does not pay on their behalf, or reimburse them for, that **Loss**, then the **Company** will, subject to Section 2.16(a)(i) and 2.16(a)(ii) above, pay that **Loss** on behalf of the **Insured Person** without applying such Deductible in Item 6 of the Declarations as is otherwise applicable; the **Company** shall be reimbursed for that Deductible within 30 days of such payment, the **Policyholder** and the **Insured Person's Organisation** being jointly and severally liable for making the reimbursement; and
- (c) in the event of **Loss** being sustained which is covered by this Section 2 pursuant to this Section 2.16 and by any directors and officers liability policy, charity or not for profit liability policy, or any other policy affording similar cover, issued by Chubb Insurance Company of Europe S.A. or any other subsidiary, affiliate or associate of The Chubb Corporation, the Limit of Liability stated in Item 3(A) of the Declarations, together with the additional limit of liability available only for **Defence Costs** stated in Item 5 and the Insuring Clause 2.1 Additional Limit of Liability stated in Item 3(B), shall be reduced by the amount paid or payable under such other policy; and
- (d) such cover is not extended to **Loss** arising out of an **Outside Directorship** on account of any U.S.A. **Claim** by or on behalf of the **Outside Entity** in which that **Outside Directorship** is or was held or any director, officer, trustee, governor, or equivalent in any jurisdiction, of that **Outside Entity** except:
  - (i) an **Employment Claim**;
  - (ii) a derivative action brought on behalf of an **Outside Entity** by one or more persons who are neither **Insureds** nor directors, officers, trustees, governors, nor equivalents in any jurisdiction, of that **Outside Entity** and who are not acting at or with the instigation or solicitation of any such person;
  - (iii) a **Claim** for contribution or indemnity by an **Insured Person**, or by one or more of an **Outside Entity's** directors, officers, trustees, governors, or equivalents in any jurisdiction, if such **Claim** directly results from another **Claim** first made during the **Policy Period** and covered under this Section 2; and
  - (iv) **Defence Costs**; and
- (e) such cover is not extended to **Loss** arising out of an **Outside Directorship** on account of any **Claim** which is for **Wrongful Acts** at a time when such **Insured Person** is not serving in the **Outside Directorship** or on account of any **Formal Investigation** which is an inquiry into conduct at a time when such **Insured Person** is not serving in the **Outside Directorship**.

### Organisation Failing to Indemnify

- 2.17 If an **Insured Person** is **Indemnifiable** by their **Organisation** for a covered **Loss** and their **Organisation** does not pay on their behalf, or reimburse them for, that covered **Loss**, then the **Company** will pay that covered **Loss** on behalf of the **Insured Person** without applying such Deductible in Item 6 of the Declarations as is otherwise applicable. The **Company** shall be reimbursed for that Deductible within 30 days of such payment, the **Policyholder** and the **Insured Person's Organisation** being jointly and severally liable for making the reimbursement. This Section 2.17 does not apply to **Loss** arising out of an **Outside Directorship**.



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### Exclusions to All Insuring Clauses

- 2.18 The **Company** shall not be liable for **Loss** on account of any **Claim**:
- (a) based upon, arising from, or in consequence of any fact or **Wrongful Act** forming part of circumstances or of a **Claim** of which written notice has been given under any policy which this Policy renews, replaces or follows in whole or in part;
  - (b) based upon, arising from, or in consequence of any claim form, writ, demand, suit or other proceeding pending, or order, decree or judgement entered, for or against any **Insured** or **Outside Entity** on or prior to the Pending or Prior Date stated in Item 7(A) of the Declarations or a fact, circumstance or situation the same as or substantially the same as any of those underlying or alleged in such claim form, writ, demand, suit, other proceeding, order, decree or judgement;
  - (c) for **Personal Injury** or **Property Damage** (this exclusion shall not apply to **Defence Costs** on account of a criminal proceeding for manslaughter or any other offence);
  - (d) for breach of any law, duty or trust by an **Insured Person** in their capacity as trustee, fiduciary or administrator of any superannuation, pension, profit sharing, health and welfare or other employee benefit scheme, programme, plan or trust established or maintained to provide benefits to employees or directors;
  - (e) based upon, arising from or in consequence of any fraudulent act or omission or any intentional breach of law by such **Insured Person**, if there is a finding of such fraud or breach in a judgement or other final adjudication or if such **Insured Person** admits such fraud or breach;
  - (f) based upon, arising from, or in consequence of such **Insured Person** having gained any personal profit, remuneration or advantage to which such **Insured Person** was not legally entitled, if there is a finding of such gain in a judgement or other final adjudication or if such **Insured Person** admits such gain;
  - (g) which is a **U.S.A. Claim** by or on behalf of any **Insured** except:
    - (i) a **Shareholder Derivative Action**;
    - (ii) an **Employment Claim**;
    - (iii) a **Claim** by an **Insured Person** for contribution or indemnity, if such **Claim** directly results from another **Claim** first made during the **Policy Period** and covered under this Section 2;
    - (iv) a **Claim** by a former **Insured Person**;
    - (v) a **Claim** by an **Organisation**, due to its insolvency and at the instigation of its liquidator, receiver, administrative receiver, administrator, supervisor or other insolvency office-holder for obtaining a remedy under the Insolvency Act 1986 or any consolidation, amendment or re-enactment thereof or under equivalent legislation of another jurisdiction; and
    - (vi) **Defence Costs**;
  - (h) based upon, arising from, or in consequence of **Pollution** except:
    - (i) **Loss** on account of a **Claim** brought and maintained entirely outside the **U.S.A.** which is not a **Claim** for **Pollution**;
    - (ii) **Defence Costs**, up to the **Defence Costs** for **Pollution** sublimit stated in Item 4(A) of the Declarations, on account of a **Claim** for **Pollution** brought and maintained entirely



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outside the U.S.A.; and

- (iii) **Loss** for which an **Insured Person** is not **Indemnifiable** and which is on account of a **Claim** brought or maintained, in whole or in part, in the **U.S.A.** which is a **Shareholder Derivative Action** or any other action brought by a shareholder of an **Organisation** in his capacity as such.
- (i) based upon, arising from or in consequence of any actual or alleged failure to perform, or any **Wrongful Act** in the performance of, professional services;
- (j) brought or maintained by or on behalf of any person owning, at the time of any **Wrongful Act** alleged in the **Claim**, 50% or more of the issued shares of an **Organisation**, whether the ownership is legal or beneficial.

### Severability of Exclusions

- 2.19 For purposes of determining whether an exclusion applies, no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**.

### Limits of Liability

- 2.20 The **Company's** maximum liability for all **Loss** and **Attendance Compensation**, whether covered under one or more of the Insuring Clauses and/or otherwise, on account of all **Claims** first made or instituted during the **Policy Period**, whether involving one or any number of **Insureds**, shall not exceed the Limit of Liability for each **Policy Period** stated in Item 3(A) of the Declarations together with the additional limit of liability available for **Defence Costs** only stated in Item 5 of the Declarations.

The **Company's** maximum liability for all **Attendance Compensation** on account of all **Claims** first made or instituted during the **Policy Period** whether involving one or any number of **Insureds**, shall not exceed the **Attendance Compensation** sublimit for each **Policy Period** stated in Item 4(B) of the Declarations, which sublimit is part of and not in addition to the maximum liability of the **Company** referred to in the first paragraph of this Section 2.20.

Notwithstanding the above, the **Company's** maximum liability for **Loss** in respect of which a sublimit is specified for each **Loss** and/or for each **Policy Period** in the Declarations or any endorsement shall be that specified sublimit. Sublimits are part of and not in addition to the maximum liability of the **Company** referred to in the first paragraph of this Section 2.20.

**Defence Costs** and **Legal Representation Expenses** are part of and not in addition to the Limit of Liability stated in Item 3(A) of the Declarations. The payment by the **Company** of **Defence Costs** or **Legal Representation Expenses** erodes that Limit of Liability. However, the payment by the **Company** of **Defence Costs** (other than **Defence Costs** for **Pollution**) shall erode that Limit of Liability only after exhaustion of the additional limit of liability for **Defence Costs** only.

Amounts stated for Limits of Liability and sublimits are maximum liabilities of the **Company** for all **Insureds** together, not maximum liabilities per **Insured**.

### Deductible

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



## Causal Connection

2.22 All **Claims** arising out of the same **Wrongful Act** or conduct and/or arising out of causally-connected **Wrongful Acts** and/or conduct, whether by one or any number of **Insureds**, shall be deemed to be a single **Claim** first made or instituted on:

- (a) the date when the first of such **Claims** was first made or instituted; or
- (b) the earliest date one of such **Claims** is deemed first made or instituted by this Section 2 or any policy which this Section 2 renews, replaces or follows in whole or in part (if that earliest date is earlier than the date referred to in (a) immediately above),

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

## Allocation of Loss

2.23 If, on account of a **Claim**, an **Insured Person** incurs covered **Defence Costs** on account of an allegation against both the **Insured Person** and that **Organisation**, then, if the **Insured Person** and the **Organisation** are being defended by the same lawyers, 100% of those **Defence Costs** shall be deemed allocated to covered **Loss**.

Except with regard to **Loss** predetermined under the paragraph immediately above, there shall, with regard to each and every **Claim**, be allocated to covered **Loss** only that part of liability imputable to an **Insured Person** on account of covered matters and for which the **Insured Person** is not entitled to contribution from any person.

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

Any allocation or payment of **Defence Costs** or **Legal Representation Expenses** shall not create any presumption as to the allocation of other **Loss**.

## Defence and Settlement

2.24 It shall be the duty of each **Insured** and not the duty of the **Company** to defend **Claims** other than **Non-U.S.A. I v I Claims**.

The **Company** shall have the right, but not the duty, to defend **Non-U.S.A. I v I Claims** and to appoint lawyers for that purpose. Each **Insured** shall, as a condition precedent to the **Company's** liability for **Loss** on account of a **Non-U.S.A. I v I Claim**, give to the **Company** all such co-operation in the defence of the **Non-U.S.A. I v I Claim** as the **Company** may reasonably require.

The **Company** shall have the right, and shall be given the opportunity to, associate with each **Insured** in the investigation, defence, negotiation and settlement of any **Claim, Loss** on account of which appears reasonably likely to be covered in whole or in part by this Section 2.

The **Company** may make any settlement of a **Non-U.S.A. I v I Claim** it considers sensible. If the **Insured Person** withholds consent to such settlement, the **Company's** liability for **Loss** on account of that **Claim** shall not exceed the amount for which the **Company** could have settled that **Claim** on the **Insured Person's** behalf plus **Defence Costs** accrued as of the date at which acceptance of such settlement was proposed in writing by the **Company** to the **Insured Person**.

Each **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs** or **Legal Representation Expenses** or otherwise assume any contractual obligation or admit any liability with respect



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to any **Claim** without the **Company's** prior written consent, which shall not be unreasonably withheld. Subject to Section 2.13 above, the **Company** shall not be liable for any settlement, **Defence Costs, Legal Representation Expenses**, assumed obligation or admission to which it has not consented in writing.

Each **Insured** undertakes not to prejudice the **Company's** interests or its potential or actual rights of recovery, not to prejudice the defence of any **Claim** and to give to the **Company** such information and co-operation as the **Company** may require.

Any payment by the **Company** of **Defence Costs, Legal Representation Expenses** or **Attendance Compensation** shall be reimbursed to the **Company**, if and to the extent it is determined that such **Defence Costs, Legal Representation Expenses** or **Attendance Compensation** are not covered by this Policy. The **Policyholder** and all **Insureds** to or on behalf of whom such **Defence Costs, Legal Representation Expenses** or **Attendance Compensation** were paid shall be jointly and severally liable for making the reimbursement.

If a **Non-U.S.A. I v I Claim** by an **Organisation** comes to an end without that **Organisation** obtaining an award of damages or a settlement sum from an **Insured Person** against whom the **Non-U.S.A. I v I Claim** is made, the **Company** shall be paid the entire amount of costs, expenses, charges and fees paid or remaining to be paid by any **Insured Person** or the **Company** on the defence or investigation of that **Non-U.S.A. I v I Claim** regardless of the amount of those costs, expenses, charges and fees which such **Insured Person** would be entitled to recover from that **Organisation**, the **Policyholder** and that **Organisation** being jointly and severally liable for making that payment.



### Section 3: Corporate Legal Liability

#### Insuring Clause 3.1

3.1 The **Company** shall pay, on behalf of each **Organisation**, **Loss**.

#### Insuring Clause 3.2

3.2 The **Company** shall pay, on behalf of each **Organisation**, **HS Representation Expenses**

#### Definitions

3.3 When used in bold type in this Section 3:

**Claim** means:

(a) with respect to Insuring Clauses 3.1:

- (i) a written demand for specific monetary compensation or specific non-pecuniary relief based upon facts or circumstances that would create a cause of action in law;
- (ii) a civil proceeding including third party proceeding, counterclaim or arbitration proceeding; or
- (iii) a criminal proceeding;

first made against an **Organisation** during the **Policy Period** alleging a **Wrongful Act**, but not including any written demand, civil proceeding or criminal proceeding made, brought, maintained or instigated by an enforcing authority under the Health and Safety at Work Etc. Act 1974 or any other administrative or regulatory body;

(b) with respect to Insuring Clause 3.2 only, an **HS Investigation**.

**Defence Costs** means that part of **Loss** consisting of reasonable and necessary costs, expenses, charges and fees (including but not limited to lawyers' fees and experts' fees) incurred in defending or investigating a **Claim** (other than internal corporate expenses of an **Organisation**). **Defence Costs** shall also include premium paid for insurance instruments or for bonds which are required in order to institute an appeal but without any obligation to furnish or procure such insurance instruments or bonds.

**HS Investigation** means a formal enquiry into the conduct of an **Organisation** first instituted during the **Policy Period** and conducted by an enforcing authority under the Health and Safety at Work Etc. Act 1974

**HS Representation Expenses** means that part of **Loss** which consists of reasonable and necessary legal representation fees and related professional charges which an **Organisation** incurs in its representation at an **HS Investigation**.

**Loss** means the amount which an **Organisation** is legally liable to pay on account of a **Claim** including:

- (a) **Defence Costs**;
- (b) **HS Representation Expenses**; and
- (c) awards of damages, including punitive, exemplary or aggravated damages, judgements, awards of claimant's costs and sums payable pursuant to any settlements.

**Loss** does not include:



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- (i) matters uninsurable under English law; or
- (ii) fines or penalties or the multiple portion of any multiplied damages award.

**Organisation** means the **Policyholder** or a **Subsidiary**

**Personal Injury** means bodily injury, sickness, disease or death of any natural person, but not mental or emotional distress.

**Shareholder Derivative Action** means a **Claim** brought on behalf of an **Organisation** by a shareholder of the **Organisation** in his capacity as such, and not at the instigation or solicitation of an **Organisation** or of a director or officer, or equivalent in any jurisdiction, of an **Organisation**.

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

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

**Wrongful Act** means any wrongful act or omission, error, misstatement, misleading statement, neglect, or breach of duty or breach of trust, committed, attempted, or allegedly committed or attempted, by an **Organisation**.

**Wrongful Employment Practice** means any wrongful or unfair dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, employment-related discrimination, employment-related harassment, wrongful failure to employ or to promote, wrongful disciplinary action, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, employment-related defamation, employment-related breach of data protection laws, or employment-related wrongful infliction of emotional distress, including any of these which may constitute retaliatory action in respect of whistle-blowing or similar activities committed, attempted or allegedly committed or attempted by an **Organisation**.

### Exclusions

3.4 The **Company** shall not be liable for **Loss** on account of any **Claim**:

- (a) based upon, arising from, or in consequence of any circumstance if written notice of such circumstance has been given under any policy which this Policy renews, replaces or follows in whole or in part;
- (b) based upon, arising from, or in consequence of any claim form, writ, demand, suit or other proceeding pending, or order, decree or judgement entered, against any **Organisation** on or prior to the Pending or Prior Date stated in Item 7(B) of the Declarations or a fact, circumstance or situation the same as or substantially similar to any of those underlying or alleged in such claim form, writ, demand, suit, other proceeding, order, decree or judgement;
- (c) for **Personal Injury** or **Property Damage**;
- (d) based upon, arising from, or in consequence of any **Wrongful Act** in any way connected to a superannuation, pension, profit sharing, health and welfare or other employee benefit scheme, programme, plan or trust established or maintained to provide benefits to employees or directors;
- (e) based upon, arising from, or in consequence of any **Wrongful Employment Practice**;



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- (f) based upon, arising from or in consequence of any dishonest or fraudulent act or omission or any intentional breach of law by an **Organisation** or its director, officer or equivalent in any jurisdiction;
- (g) based upon, arising from or in consequence of any **Organisation** having gained any profit or advantage to which such **Organisation** was not legally entitled;
- (h) for breach of any law or regulation or other legal obligation concerning competition or for tortious interference with trade;
- (i) for the rendering or failure to render any service or advice to a customer or client of an **Organisation**;
- (j) for misappropriation, infringement or breach of copyright, patent, trademark, trade secret or any other intellectual property rights, except **Defence Costs** up to the Intellectual Property **Defence Costs** sublimit stated in Item 4(C) of the Declarations;
- (k) based upon, arising from or in consequence of any public offering, solicitation, sale, distribution or issuance of securities except **Defence Costs** up to the Public Offering **Defence Costs** sublimit stated in Item 4(D) of the Declarations;
- (l) based upon, arising from or in consequence of any contractual obligation except **Defence Costs** up to the Contract Claim **Defence Costs** sublimit stated in Item 4(E) of the Declarations which shall only be paid by the **Company** following a final adjudication;
- (m) based upon, arising from or in consequence of **Pollution** except **Defence Costs** up to the **Pollution Defence Costs** sublimit stated in Item 4(F) of the Declarations;
- (n) for direct or indirect tax obligations of any kind;
- (o) brought by or on behalf of any **Organisation** or any director or officer, or equivalent in any jurisdiction, of an **Organisation** except a **Shareholder Derivative Action**;
- (p) based upon, arising from or in consequence of a **Wrongful Act** of a **Subsidiary** prior to the time when the **Subsidiary** became a **Subsidiary**;
- (q) brought or maintained, in whole or in part, in the **U.S.A.**;
- (r) brought or maintained by or on behalf of any person owning, at the time of any **Wrongful Act** alleged in the **Claim**, 50% or more of the issued shares of an **Organisation**, whether the ownership is legal or beneficial.

### Severability

- 3.5 For purposes of determining cover under this Section 3, there shall be imputed to an **Organisation** only facts pertaining to and knowledge possessed by any past, present or future chief executive officer, chief financial officer, president, chairman, managing director, other board director or equivalent position in any jurisdiction, company secretary or in-house legal counsel.

### Limits of Liability and Deductible

- 3.6 The **Company's** maximum liability for all **Loss**, whether covered under Insuring Clause 3.1 and/or Insuring Clause 3.2 and/or otherwise, on account of all **Claims** first made or deemed to be made during the **Policy Period**, whether against one or any number of **Organisations**, shall not exceed the Limit of Liability for each **Policy Period** stated in Item 3(C) of the Declarations.



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Notwithstanding the above, the **Company's** maximum liability for **Loss** in respect of which a sublimit is specified for each **Loss** and/or for each **Policy Period** in the Declarations (including the sublimit for **HS Representation Expenses** stated in Item 4(G) of the Declarations) or any endorsement shall be that specified sublimit. Sublimits are part of and not in addition to the maximum liabilities of the **Company** referred to above in this Section 3.6.

**Defence Costs** are part of and not in addition to the Limit of Liability stated in Item 3(C) of the Declarations; the payment by the **Company** of **Defence Costs** erodes that Limit of Liability.

All **Loss** arising out of the same **Wrongful Act** and/or arising out of causally-connected **Wrongful Acts**, whether by one or any number of **Organisations**, shall be deemed to be a single **Loss** and to have originated in the earliest **Policy Period** in which a **Claim** is first made alleging said **Wrongful Act** or causally-connected **Wrongful Acts**.

The **Company's** liability for each and every **Claim** shall apply only to that part of **Loss** which is in excess of the applicable Deductible stated in Item 6 of the Declarations, which shall be borne by the **Organisations** uninsured and at their own risk.

Amounts stated for Limits of Liability and sublimits are maximum liabilities of the **Company** for all **Organisations** together, not maximum liabilities per **Insured**.

### Defence and Settlement

3.7 The **Company** shall have the right, but not the duty, to take over and conduct at any time the defence of **Claims**, including to appoint lawyers or other representatives or advisers for that purpose.

With respect to any **Claim**, the **Company** may at any time pay to the **Policyholder** the amount of the Limit of Liability stated in Item 3(C) of the Declarations which remains uneroded, the amount of any applicable sublimit which remains uneroded or the amount for which the **Claim** can be settled, whichever is the lowest. Such payment shall immediately discharge all liability of the **Company** in respect of the **Claim** including liability for further **Defence Costs**.

Each **Organisation** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the **Company's** prior written consent. The **Company** shall not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which it has not consented in writing.

Each **Organisation** undertakes not to prejudice the **Company's** interests or its potential or actual rights of recovery and to give to the **Company** such information and co-operation as the **Company** may require.

### Acquisition or Creation of Another Entity

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

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

then the entity shall automatically become an **Organisation** under this Section 3 with effect from the date of such acquisition or creation but only with respect to **Wrongful Acts** after such acquisition or creation. The **Company** may agree to provide cover for prior **Wrongful Acts** following the receipt of any information the **Company** may require and shall have the right to amend the terms of this Section 3 including charging an additional premium.



## @daptive D&O Liability

However, if such acquired or created entity:

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

the **Policyholder** shall give written notice of such acquisition or creation to the **Company** as soon as practicable and also such information as the **Company** may require. The **Company** shall have the right to amend the terms of this Section 3 including charging an additional premium.

### Acquisition of the Policyholder

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

- (a) the **Policyholder** merges into or consolidates with another organisation (other than in accordance with Section 3.8(b) above); or
- (b) a person or persons acting in concert acquires ownership or voting control of more than 50% of the outstanding securities representing the present right to vote for the election of the members of the board of directors of the **Policyholder**,

cover under this Section 3 for the **Organisations** shall continue until the end of the **Policy Period**, but only for **Wrongful Acts** prior to such merger, consolidation or acquisition.

### Prior Subsidiaries

3.10 Should an entity cease to be a **Subsidiary** before or after the inception date of this Policy, cover under this Section 3 with respect to such **Subsidiary** shall continue until termination of this Policy but only with respect to **Wrongful Acts** prior to the date such entity ceased to be a **Subsidiary**.

### Representations

3.11 In issuing this Section 3 to the **Policyholder**, the **Company** has relied upon the material declarations and statements in the written application for this Policy. All such material declarations and statements are the basis of cover under this Section 3 and are incorporated into and constitute part of this Section 3.