



**Directors
and Officers
Policy**

iprism Directors and Officers Liability Insurance for SME's

A warm welcome and thank you for choosing to insure through iprism.

The Policy, Schedule and any Endorsements and Statement of Fact should be read as if they were one document.

The Policy is a contract between you the **Insured** and your **Insurer** and the Statement of Fact made by you is the basis of the contract.

Your **Insurer** detailed in the Schedule will insure you as stated in each operative section of the policy during the **Policy period** for which your premium has been accepted provided all the terms and conditions of the policy are kept.

The name of your **Insurer** can be found on the Statement of Fact, Schedule and Employers Liability Certificate (where issued).

For and on behalf of the **Insurer**



Gary Burke

Chief Executive

iprism Underwriting Agency Limited

Law applicable to the contract

Unless you and we have agreed otherwise the law applicable to this contract is that of England and Wales. If there is any dispute as to which law applies it will be English law.

This is a legal document and should be kept in a safe place.

Please take time to read all these documents to make sure that the cover provided meets your needs and that you understand the terms, exclusions and conditions. If there is anything you do not understand or you need to change please contact your insurance adviser immediately.

These documents include everything you need to know about your insurances:

- Statement of Fact/Proposal Form
- Policy Wording
- Schedule

In addition there may be further documents as follows:

- Endorsements

Use of Language

Unless otherwise agreed, the contractual terms and conditions and other information relating to this contract will be in English.

Your Insurers

This insurance is underwritten by Chartis Insurance UK Limited which is authorised and regulated by the Financial Services Authority (FSA number 202628). This information can be checked by visiting the FSA website (www.fsa.gov.uk/register). Chartis Insurance UK Limited is a member of the Association of British Insurers. Registered in England: company number 1486260. Registered address: The Chartis Building, 58 Fenchurch Street, London, EC3M 4AB.

About iprism Underwriting Agency Limited

iprism is a trading name of iprism Underwriting Agency Limited. Registered Office: 100 Fenchurch Street, London, EC3M 5JD. Registered in England No. 5604278. Authorised and regulated by the FSA. Our FSA Register number is 460209 and our permitted business is advising on, and arranging general insurance contracts.

Cancellation

This policy shall be cancelled only on each **anniversary date** upon the **insurer** or the insured given the other party 30 days notice in writing prior to such **anniversary date**.

Continuous Policy

The **insurer** agrees to continuous cover under this policy. To achieve this, all of the references in this policy to **policy period** shall be for a continuous period commencing from the **inception date** and terminating only upon non-payment of premium by the **insured** or cancellation, whichever is the earlier. It shall be a condition precedent to continuous cover in accordance with this general provision that the **insured** inform the **insurer** of any material changes to the information supplied by the **insured** in the declaration. Upon such notification, continuation of cover under this policy shall be subject to the insured's acceptance of any amendments to the terms and conditions of this policy, which shall be made by the **insurer** at its sole discretion, and the insured agreeing to pay any additional premium charged by the **insurer**.

Customer satisfaction

We hope that you are extremely happy with your iprism D&O insurance policy but we do recognise that on occasions things can go wrong. If this is the case, we want to know about it as soon as possible so that we can put things right and make sure it doesn't happen again.

If you are dissatisfied please follow these steps:

Firstly, Contact your insurance adviser by phone or in writing to outline your concerns/issues and ask them to review the situation. If you remain unhappy with their response you may contact the iprism customer services team on 0845 465 0050, by e-mail to customerservice@iprism.co.uk or by writing to

Customer Services Manager, iprism Underwriting Agency Limited, 100 Fenchurch Street London EC3M 5JD

If you remain unhappy with the decision you receive you may write to the **insurer**; Chartis Insurance UK Limited

Customer Relations Manager
Chartis Insurance UK Limited
The Chartis Building
2-8 Altyre Road
Croydon
CR9 2LG

Email: uk.customer.relations@chartisinsurance.com

If you are dissatisfied with the final decision then you may be able to refer it to the Financial Ombudsman Service (FOS), subject to meeting their complaints criteria. You can find out more about the FOS, and their complaints criteria, by visiting their website or calling their helpline.

Financial Ombudsman Service
South Quay Plaza, 183 Marsh Wall, London E14 9SR.
Helpline: 0845 080 1800
www.financial-ombudsman.org.uk

Please note that the Financial Ombudsman Service will only consider your complaint if you have followed the process above. Following the complaints process does not affect your right to take legal action.

Customers with disabilities

This policy is also available in large print, audio and Braille. If you require any of these formats please contact Customer Services Manager, iprism Underwriting Agency Limited, 100 Fenchurch Street London EC3M 5JD

Financial Services Compensation Scheme (FSCS)

iprism and **Your Insurers** are covered by the Financial Services Compensation Scheme (FSCS) This means that **You** may be entitled to compensation from the scheme if **We** cannot meet **Our** obligations This depends upon the type of business and the circumstances of the claim

Further information about the scheme is available from the FSCS website www.fscs.org.uk, or write to Financial Services Compensation Scheme, 7th floor Lloyds Chambers, Portsoken Street, London E1 8BN

Please note that telephone calls may be recorded and/or monitored.

1. Insurance Cover

In consideration of the payment of the premium, the **insurer** agrees as follows:

The following Insurance Covers A,B and C are afforded solely for **claims** first made against an **insured** during the **policy period** and reported to the **insurer** as required by this policy.

A: DIRECTORS AND OFFICERS LIABILITY

The **insurer** shall pay the **loss** of each **insured person** resulting from any **claim** first made against the **insured person** during the **policy period** for any **wrongful act** except for and to the extent that the **company** has indemnified the **insured**.

B: COMPANY REIMBURSEMENT

The **insurer** shall pay the **loss** of the **company** resulting from any **claim** first made against the **insured person** during the **policy period** for any **wrongful act** but only when and to the extent that the **company** has indemnified the **insured person** for the **loss**.

C: EPL COMPANY INSURANCE

The **insurer** shall pay the **loss** of the **company** resulting from any **employment practice claim** up to the **Epl sub-limit of liability** for any **wrongful act** of that **company** arising from an **employment practice claim**.

Subject to all of the terms, conditions and exclusions of this policy, the **insurer** shall advance **defence costs** in respect of Insurance Covers A, B and C only resulting from any **claim** before its final resolution.

D: CRIME INSURANCE

The **insurer** shall indemnify the **company** up to the **crime limit of liability** for **direct financial loss** first **discovered** during the **policy period** resulting directly from:

(i) **Employee Dishonesty**

Loss of money, securities or other property resulting from one or more fraudulent or dishonest acts committed by an **employee** during the course of employment by the **company**, provided always that such fraudulent or dishonest acts are committed during the **policy period** with the principal intent:

- (a) to cause the **company** to sustain such **direct financial loss**; and
- (b) which results in financial benefit for the **employee**

(ii) Third Party Computer and Funds Transfer Fraud

The theft of **money**, securities or other property by **computer fraud**; or the theft of any of the **company's** funds from its **transfer account** through **fraudulent transfer instructions**.

2. Definitions

- 2.1 **Affiliate** means any person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, or any entity that directly, or indirectly through one or more intermediaries, is a successor in interest to the **policyholder** or any **subsidiary**.
- 2.2 **Anniversary date** means each 12 month period after the **inception date** of this policy.
- 2.3 **Associated company** means any **company** in which the **policyholder** owns on or before the inception of the **policy period** any amount which is less than or equal to 50 per cent of the issued and outstanding voting shares either directly or indirectly through one or more of its subsidiaries. With respect to Insurance Cover D only, cover operates for an **associated company** only where the **company** retains **management control**.
- 2.4 **Civil defence costs** means any reasonable and necessary legal fees, costs and expenses incurred by the **company**, with the **insurer's** prior written consent, when applying for civil proceedings to be dismissed or withdrawn on the basis that the alleged liability resides with the perpetrator of the **identity fraud**, and not with the **company**.
- 2.5 **Claim** means:
- (i) any suit or proceeding, including any civil proceeding, third party proceeding, counter **claim** or arbitration proceeding, brought by any person or organisation against an **insured** for monetary damages or other relief, including non-pecuniary relief;
 - (ii) any written demand from any person or organisation that it is the intention of the person or organisation to hold an **insured** responsible for the results of any specified **wrongful act**;
 - (iii) any criminal prosecution brought against an **insured**; and/or
 - (iv) any administrative or regulatory proceeding brought against an **insured**.
- Any **claim** or **claims** arising out of, based upon or attributable to a **single wrongful act** shall be considered to be a single **claim** for the purposes of this policy.
- The term **claim** shall include an **employment practice claim** and a **securities claim**.
- 2.6 **Company** means the **policyholder** specified in Item 1 of the Schedule and any **subsidiary, associated company**, division, sector, region, product group or other internal **company** structure or segment detailed in an organisation chart or similar document.
- 2.7 **Computer fraud** means the dishonest or fraudulent conversion of assets under the direct or indirect control of the **company's** computer system by means of the direct fraudulent accessing of such computer system by persons other than an **employee** by:
- (i) the insertion of fraudulent data or instructions into such computer system; or
 - (ii) fraudulent alteration of data, programs or routines in such computer system.
- 2.8 **Continuity date(s)** means the date(s) specified in Item 6 of the Schedule. The pending and prior litigation **continuity date** shall be the date from which the **policyholder** has maintained uninterrupted cover with the **insurer**, or with any other **insurer** if the initial proposal form submitted to such **insurer** is provided to and accepted by the **insurer** at the inception of this policy, or such other date(s) as agreed with the **insurer**.

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- 2.9 **Corporate identity** means the publicly available data on file or stored on the computer system of a **company** or of an official registry or of any other party which relates to the **company's** formation and genuine identity, including memoranda and articles of association, statutorily required returns or filings, official records of regulatory authorisations, licences or permits and records of legal compliance or infractions, where the purpose of which is to publicly document, authenticate or prove the existence and good standing of the **company** or which may be relied upon by investors, **financial institutions**, vendors, credit reporting authorities and others in assessing and establishing the **company's** credit ratings and/or good standing.
- 2.10 **Crime limit of liability** means the total aggregate liability of the **insurer** with respect to all **direct financial loss** arising under Insurance Cover D specified in Item 3 (c) of the Schedule.
- 2.11 **Criminal defence costs** means reasonable and necessary legal fees, costs and expenses incurred by the **company**, with the **insurer's** prior written consent, when applying for criminal proceedings to be dismissed or withdrawn on the basis that the alleged offence was not committed by the **company** but by the perpetrator of the **identity fraud**.
- 2.12 **Crime retention** means the **retention** amount specified in Item 4 (b) of the Schedule applicable to Insurance Cover D only.
- 2.13 **Defence costs** means, except with respect to Insurance Cover D, reasonable and necessary fees, costs and expenses incurred with the written consent of the **insurer** (including premiums for any appeal bond, attachment bond or similar bond, but without obligation to apply for or furnish any bond) resulting solely from the investigation, adjustment, defence and appeal of any **claim** but shall not include the salary of any **insured**.
- 2.14 **Direct financial loss** means the **direct financial loss** sustained by the **company** during the **policy period** as a result of any single act, single omission, or single event, or series of related or continuous acts, omissions or events. A series of related or continuous acts or omissions or events shall be treated as a single act, omission or event.
- Notwithstanding the above, **direct financial loss** shall not include salaries, fees, commissions, bonuses, promotions, awards, profit sharing, pensions or other similar **employee** benefits earned in the normal course of employment.
- 2.15 **Director or officer** means any natural person duly appointed or elected as a **director or officer**, or equivalent position, of the **company**.
- 2.16 **Discovered or discovery** means when any **responsible person** first has knowledge of any act, omission or event which could reasonably be foreseen to give rise to a **direct financial loss** covered by this policy even though the exact amount or details of such **direct financial loss** are not known at the time of **discovery**. Such **discovery** shall constitute **discovery** by every **company**.
- 2.17 **Discovery period** in respect to Insurance Covers A, B and C means the period of time specified in Extension 4.4, immediately following the termination of this policy during which written notice may be given to the **insurer** of any **claim** first made against the **insured** during such period of time for any **wrongful act** occurring prior to the end of the **policy period** and otherwise covered by this policy. With respect to Insurance Cover D, **discovery period** means the period of time specified in General Provisions 5.20.

2.18 **Employee** means any natural person or persons who has entered into or works under a contract of service with the **company** in the ordinary course of the **company's** business during the **policy period** and whom the **company**:

- (i) compensates by salary, wages and/or commissions; and
- (ii) has the right to govern and direct in the performance of such service

Employee shall include any:

- (a) part-time or temporary **employee**;
- (b) student gaining work experience with the **company**;
- (c) director or trustee of the **company** while performing acts coming within the scope of the usual duties of an **employee**;
- (d) individual or individuals assigned to perform **employee** duties for the **company** by any agency furnishing temporary personnel on a contingent or part-time basis; provided, however, that this policy does not cover any **direct financial loss** caused by such individual if such **direct financial loss** is also covered by an insurance or suretyship held by the agency furnishing such temporary personnel to the **company**.

Employee shall not include any person who controls more than 15% of the issued share capital of any **company**.

2.19 **Employment practice claim** means any **claim** or series of related **claims** relating to a past present or prospective **employee** of the **company** and arising out of any actual or alleged unfair or wrongful dismissal, discharge or termination, either actual or constructive, of employment, employment-related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunities, wrongful discipline; failure to furnish accurate job references; failure to grant tenure or negligent **employee** evaluation; or sexual or workplace or racial or disability harassment of any kind (including the alleged creation of a harassing workplace environment); or unlawful discrimination, whether direct, indirect, intentional or unintentional, or failure to provide adequate **employee** policies and procedures; **retaliation** (including lockouts); and for the avoidance of doubt, any other **claim** pursuant to the Employment Rights Act 1996.

2.20 **Epl sub-limit of liability** means the total aggregate liability of the **insurer** with respect to all **loss** arising under Insurance Cover C for all **employment practice claims** against all companies combined specified in Item 3 (b) of the Schedule.

2.21 **Enquiry agent fees** means reasonable fees, costs and expenses of a professional private investigation agency, incurred and paid by the **company** with the **insurer's** prior written consent, to investigate the identity of the perpetrator and his or her modus operandi in connection with an **identity fraud**.

2.22 **Financial institution** means a bank, savings or similar investment institution at which the **company** maintains a **transfer account**.

2.23 **Fraudulent transfer instructions** means

- (i) in respect of electronic or verbal instructions; fraudulent electronic, telegraphic, cable, teletype, **tested** telex, **tested** facsimile or **tested** telephone instructions to a **financial institution** to debit a **transfer account** and to transfer, pay or deliver funds from such account, which instructions purport to have been transmitted by the **company** or by a person duly authorised by the **company** to issue such instructions but which have been fraudulently transmitted by another; and
- (ii) in respect of written instructions; fraudulent written instructions to a **financial institution** to debit a **transfer account** and to transfer, pay or deliver funds for such account through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by the **company** but which have been fraudulently issued, forged or altered by another.

2.24 **Full annual premium** means the annual premium level in effect immediately prior to the end of the **policy period**.

2.25 **Identity fraud** means the fraudulent modification, alteration or corruption, or theft of **corporate identity** by an **employee** or any other party, first sustained and first **discovered** during the **policy period**.

2.26 **Inception date** means the date upon which this policy commences, as specified in the Schedule, and which forms part of the **policy period**.

2.27 **Insured** means any **insured person** and **company**.

2.28 **Insured person** means any natural person who was, is, or shall become a **director or officer** of the **company**. Cover will automatically apply to any natural person who becomes a **director or officer** after the **inception date** of this policy. **Insured person** shall include any **employee** of the **company**, but only for a **claim** or **claims** alleging wrongful act(s) committed by the **employee** in a managerial or supervisory capacity.

With respect to an **employment practice claim** only, **insured person** shall include any past, present or future **employee** of the **company**. For the avoidance of doubt the term **insured person** shall not include external auditors appointed in accordance with Section 384 of the Companies Act 1985 (UK) or any similar legislation in any other jurisdiction.

2.29 **Insurer** means Chartis Insurance UK Limited

2.30 **Limit of liability** means the amount specified in Item 3 (a) of the Schedule.

- 2.31 **Loss** means damages (including back pay and front pay), judgments, settlements and **defence costs**; however, **loss** shall not include civil or criminal fines or penalties imposed by law, non-compensatory damages including punitive or exemplary damages (other than damages awarded for defamation, libel and slander), taxes, any amount for which the **insured** is not legally liable, employment-related benefits, share options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation, any liability or costs incurred by any **insured** to modify any building or property in order to make the building or property more accessible or accommodating to a disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practice claim**, or matters which may be considered uninsurable under the law pursuant to which this policy shall be construed. Damages, judgments, settlements and **defence costs** incurred in more than one **claim** against the **insured** but resulting from a **single wrongful act** shall constitute a single **loss**.
Loss does not mean **direct financial loss**.
- 2.32 **Management control** means that the **company** controls the day-to-day management of the relevant entity and sets **security** and internal control procedures, whether financial or operational.
- 2.33 **Money** means currency, coins, bank notes and bullion, cheques, travellers' cheques, registered cheques, postal orders and **money** orders.
- 2.34 **Not-for-profit entity** means an entity registered under the Charities Act 1993 (United Kingdom) or any organisation existing for any educational, research, promotional, training or similar non-profit making purpose or any similar entity organised under the laws of any other jurisdiction, or a trade association which for the purposes of this policy shall mean a body of persons, whether incorporated or not, which is formed for the purpose of furthering the trade interests of its members, or of persons represented by its members.
- 2.35 **Outside entity** means any **associated company**, any **not-for-profit entity** or any other corporation, partnership, joint venture or other organisation which has been listed by endorsement to this policy.
- 2.36 **Pension plan or fund** means any pension, **employee** benefit, welfare benefit, share save or share option plan or charitable fund or foundation established and maintained by the **insured** for the benefit of past, present and future **employees** or their respective beneficiaries.
- 2.37 **Policyholder** means the organisation specified in Item 1 of the Schedule.
- 2.38 **Policy period** means the period of time from the **inception date** to the expiry date specified in Item 2 of the Schedule.
- 2.39 **Pollutants** include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) material to be recycled, reconditioned or **reclaimed**.
- 2.40 **Pollution sub-limit of liability** means the **sub-limit of liability** with respect to pollution **defence costs**.

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- 2.41 **Publicly traded entity** means any entity whose securities have previously been subject to a public offering.
- 2.42 **Reconstitution costs** means the reasonable costs of rewriting or amending the **company's** software programs or systems with the prior written consent of the **insurer** where such rewriting or amending is necessary to correct the programs or amend the **security** codes following **direct financial loss** covered under this policy.
- 2.43 **Reputation recovery expenses** means the reasonable fees, costs and expenses incurred and paid by the **company**, with **insurer's** prior written consent, to procure public relations services to redress adverse publicity or reputational injury due to an **identity fraud**.
- 2.44 **Responsible person** means any director, partner, officer, departmental director, senior manager, trustee or equivalent of any **company**.
- 2.45 **Retaliation** means a **wrongful act** of an **insured** relating to or alleged to be in response to any of the following activities:
- (i) the disclosure or threat of disclosure by an **employee** to a superior or to any governmental agency or authority of any act by an **insured** which act is alleged to be a violation of the law, common or statutory, of any state, territory, jurisdiction, or political subdivision thereof;
 - (ii) the actual or attempted exercise by an **employee** of any right that such **employee** has under law, including rights under any law relating to **employee** rights; or
 - (iii) any **employee** strike, work to rule, or other similar action.
- 2.46 **Retention** means the **retention** amounts specified in Item 4 (a) of the Schedule.
- 2.47 **Securities claim** means any **claim** (including a civil suit or criminal proceeding brought by the Financial Services Authority or any self regulatory organisation authorised by the Financial Services Authority or the Department of Trade and Industry or the equivalent in any other jurisdiction) made against an **insured** anywhere in the world except the United States of America alleging a violation of any law, regulation or rule, whether statutory or common law, which is:
- (i) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the **company**; or
 - (ii) brought by a securities holder of the **company**, whether directly, by class action, or derivatively on behalf of the **company**, or otherwise, alleging any **wrongful act** of an **insured**.
- 2.48 **Security** means any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt **security** of the **company**, and shall include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or purchase, voting trust certificate relating to, certificate of deposit for, or other interest in any of the foregoing.
- 2.49 **Single wrongful act** means a **wrongful act** or any related, continuous or repeated **wrongful acts** which arise from a common nucleus of facts, whether committed by the **insured** individually or by more than one **insured** and whether directed to or affecting one or more than one person or legal entity.

2.50 **Stolen identity expenses** means the reasonable and necessary legal fees, costs and expenses incurred by the **company** with the **insurer's** prior written consent and paid by the **company** to correct or reinstate public records.

2.51 **Stolen identity loss** means any civil or **criminal defence costs, enquiry agent fees, reputation recovery expenses** and/or **stolen identity expenses**.

2.52 **Subsidiary** means companies in which the **policyholder**, either directly or indirectly through one or more of its subsidiaries;

- (i) controls the composition of the board of directors; or
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital.

In respect of Insurance Covers A, B and C cover for any **claim** against any of the directors, officers and **employees** of any **subsidiary** shall apply only for **wrongful act(s)** committed while such **company** is a **subsidiary** of the **policyholder**. However, upon written request by the policyholder, the **insurer** shall consider, after assessment and evaluation of the increased exposure, granting cover for **wrongful act(s)** committed prior to the acquisition of the **subsidiary** by the **policyholder**.

In respect of Insurance Cover D cover shall apply only for **direct financial loss** committed while such **company** is a **subsidiary** of the **policyholder**. However, upon written request by the **policyholder**, the **insurer** shall consider, after assessment and evaluation of the increased exposure, granting cover for fraudulent or dishonest act(s) committed prior to the acquisition of the **subsidiary** by the **policyholder**.

2.53 **Tested** means a method of authenticating the contents of a communication between the **company** and a **financial institution** for the purpose of protecting the integrity of the communication.

2.54 **Transaction** means any one of the following events:

- (i) the **policyholder** consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (ii) any person or entity, whether individually or together with any other person or persons, entity or entities acquires an amount of the outstanding shares representing more than 50 per cent of the voting power for the election of directors of the **policyholder**, or acquires the voting rights for such an amount of the shares.

2.55 **Transfer account** means an account, maintained by the **company** at a **financial institution**, from which the **company** or the **company's** authorised representatives may cause the transfer, payment or delivery of funds:

- (i) by means of electronic, telegraphic, cable, teletype, **tested** telex, **tested** facsimile or **tested** telephone instructions (communicated directly or through a cash management service, or funds transfer system); or
- (ii) by means of written instructions establishing the conditions under which such transfers are to be initiated by such **financial institution** through an electronic funds transfer system.

2.56 **Wrongful act** means

- (i) with respect to any **insured person**; any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act by the directors, officers or **employees** in their respective capacities as a director, officer or **employee** of the **company** or as a **director or officer** of any **outside entity**, or any matter claimed against them solely because of their status as a director, officer or **employee** of the **company**.
- (ii) with respect to any **company**; any breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act by the **company**, but solely with respect to an **employment practice claim**.

3. Exclusions

Applicable to Insurance Covers A, B and C only

The **insurer** shall not be liable to make any payment under Insurance Cover A, B and C or any Extension applicable to these Covers:

- 3.1 arising out of, based upon or attributable to:
- (i) the gaining in fact of any personal profit or advantage to which the **insured** was not legally entitled;
 - (ii) the committing in fact of any dishonest or fraudulent act in the event that it is established through a judgment, or any other final adjudication, or any admission by an **insured** that the relevant conduct did in fact occur;
- 3.2 arising out of, based upon or attributable to the facts alleged or to the same or related **wrongful act(s)** alleged or contained in any **claim** which has been reported or in any circumstances of which notice has been given under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- 3.3 arising out of, based upon or attributable to any pending or prior litigation as of the pending and prior litigation **continuity date** specified in Item 6 of the Schedule, or alleging or deriving from the same or essentially the same facts as alleged in the pending or prior litigation.
- For the purposes of this exclusion, the term 'litigation' shall include, but not be limited to, any civil or criminal proceeding as well as any administrative or regulatory proceeding or official investigation or arbitration or adjudication;
- 3.4 which are brought by or on behalf of any **insured person** or the **company**; provided, however, that this exclusion shall not apply to:
- (i) any **employment practice claim** brought by any **insured person**;
 - (ii) any **claim** brought or maintained by an **insured** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered under this policy;
 - (iii) any shareholder derivative action brought or maintained on behalf of the **company** without the solicitation, assistance or participation of any **insured person** or the **company**;
 - (iv) any **claim** brought or maintained by any former director, officer or **employee** of the **company**;
- 3.5 arising out of, based upon or attributable to or in any way involving, directly or indirectly, the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**, nuclear material or nuclear waste.
- Provided, however, that the **insurer** shall pay, as part of the **limit of liability, defence costs** up to £100,000 ("the **Pollution sub-limit of liability**") incurred by any **insured** unless on or before the pollution **continuity date** specified in Item 6 of the Schedule, the **company** or any **insured person** with managerial responsibilities over environmental affairs, control or compliance, knew or could have reasonably foreseen that there existed any situation, circumstance or **wrongful act** which could have given rise to a **claim** against the **company**, or any **insured person**;

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- 3.6 in a capacity as trustee or fiduciary under law (statutory or non-statutory including common) or administrator of any pension, profit sharing or **employee** benefits programme, including but not limited to an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or the Pensions Act 1995 (UK) and any amendments thereto or any similar provisions of the law, common or statutory, of any state, territory, jurisdiction, or political subdivision thereof; provided, however, that this exclusion shall not apply to **loss** arising from a **claim** for **retaliation**;
- 3.7 arising out of, based upon or attributable to any act or omission in the **insured's** capacity as a **director or officer** of any entity other than the **company**, or by reason of the **insured's** status as a director, officer or **employee** of the other entity, other than as provided in Extension 4.3;
- 3.8 for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including **loss** of use thereof; provided, however, that any **claim** for emotional distress shall not be excluded with respect to an **employment practice claim**;
- 3.9 where legal action or litigation is brought in a court of law constituted in the United States of America or Canada or arising out of the activities of the **company** in the United States of America or Canada;
- 3.10 alleging, arising out of, based upon or attributable to the **company's** or an **insured's** performance of or failure to perform professional services for others for a fee, or any act, error, or omission relating thereto;
- 3.11 which is brought by or on behalf of whether directly or derivatively any individual or entity that owns or controls (whether beneficially, directly or indirectly) 15% or more of the issued and outstanding voting share capital of the **company**;
- 3.12 arising out of, based upon or attributable to any actual or alleged contractual liability of the **company** under any express contract or agreement; provided, however, that with respect to an **employment practice claim**, this exclusion shall not apply to the extent the **company** would have had such liability even in the absence of such contract or agreement;
- 3.13 arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social **security** benefits or any similar law or obligation whatsoever; provided, however, that this exclusion shall only apply in respect of **claims** brought under Insurance Cover C of this policy and shall not apply to any **claim** for **retaliation**;
- 3.14 alleging, arising out of, based upon or attributable to any act or omission, responsibilities, obligations or duties imposed by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and any subsequent amendments thereto.

Applicable to Insurance Cover D only

The **insurer** shall not be liable to make any payment under Insurance Cover D or any Extension applicable to this Cover arising out of, based upon or attributable to:

- 3.15 **loss** of potential income, including but not limited to interest and dividends and **loss** of computer time, not realised by the **company** because of **direct financial loss** covered under this policy;
- 3.16 costs, fees and other expenses incurred by the **company** in establishing the existence of or amount of **direct financial loss** covered under this policy unless covered under Extension 4.7;
- 3.17 damages of any type for which the **company** is legally liable, except direct compensatory damages arising from a **direct financial loss** covered under this policy;
- 3.18 the cost of rewriting or amending the **company's** software programs or systems unless covered under Extension 4.9;
- 3.19 (i) any fact, matter, circumstance or occurrence which has been notified to any **insurer** under any other policy of insurance effected prior to the **inception date** of this policy;
(ii) any fact, matter, circumstance or occurrence known to the **insured** prior to the **inception date** of this policy;
- 3.20 **loss** of or damage to proprietary information, trade secrets, confidential processing methods, or other confidential information of any kind;
- 3.21 war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority or terrorism;
- 3.22 any **pension plan or fund**;
- 3.23 any act, error or omission of any broker, factor, commission, consignee, contractor or other agent or representative of the same general character;
- 3.24 with respect to Insurance Cover D ii) only:
 - (i) any fraudulent, dishonest or criminal act of any **employee** or authorised representative of any **insured**, while working or otherwise and whether acting alone or in collusion with others;
 - (ii) unintentional or inadvertent errors or omissions.

4. Extensions

Applicable to Insurance Covers A, B and C only

Subject to all of the terms and conditions of this policy, cover is extended as follows with respect to Insurance Covers A, B and C only:

4.1 Representation at Investigations and Examinations

This policy shall provide cover for any reasonable and necessary fees, costs and expenses incurred with the prior written consent of the **insurer** resulting from the legally required attendance by any director, officer or **employee** of the **company** attributable to:

- (i) any required attendance by or on behalf of the **company** at any official investigation conducted by the Equal Opportunities Commission (UK), the Commission for Racial Equality (UK) or any similar local or foreign agency or authority in relation to the affairs of the **company**; and
- (ii) any required attendance by or on behalf of the **company** at any official investigation conducted by any enforcing authority under the Health and Safety at Work Act 1974 in relation to the affairs of the **company**; and
- (iii) any required attendance by any **insured person** at any official investigation, examination, inquiry or other similar proceeding in relation to the affairs of the **company**.

If the director, officer or **employee** of the **company** believes that as a result of 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 the **insurer** of the circumstances and the reasons for anticipating a **claim**, with full particulars as to dates and persons involved in accordance with General provision 5.15.

4.2 New Subsidiaries

Cover under this policy is extended to any **subsidiary** which the **policyholder** acquires or creates after the **inception date** of this policy provided that the **subsidiary** has total gross assets which are less than the total gross assets of the **company**.

If a newly acquired or created **subsidiary** fails to meet this characteristic or has assets in the United States of America or Canada or, has its securities listed on any exchange in the United States of America or Canada then the **policyholder** shall give the **insurer** sufficient details to permit the **insurer** to assess and evaluate the **insurer's** potential increase in exposure.

The **insurer** shall be entitled to amend the policy terms and conditions, during the **policy period**, including by the charging of a reasonable additional premium.

Unless otherwise agreed, cover as is afforded to the directors, officers or **employees** of any **subsidiary** by virtue of this extension shall only apply for **wrongful act(s)** committed while such **company** is or was a **subsidiary** of the **policyholder**.

4.3 Outside Directorships and Shadow Directorships

(i) Outside Directorships

Cover includes **loss** arising from any **claim** made against any **insured** who was, is or may become, at the specific request of the **company**, a director, officer, trustee, or governor of, or equivalent position in, any **outside entity** for any **wrongful act** in such **insured's** capacity as a director, officer, trustee, or governor, or equivalent position in, the **outside entity**.

(ii) **Shadow Directorships**

Cover includes **loss** arising from any **claim** made against any **insured** as a shadow director, as defined in Section 741 of the Companies Act 1985 or pursuant to any similar legislation in any other jurisdiction, of any **company** (hereinafter 'Shadow Directorship Company').

The cover provided by 4.3(i) and (ii) above, shall be specifically in excess of any insurance in force in respect of the **outside entity** or the Shadow Directorship Company, as well as any indemnification provided by the **outside entity** or the Shadow Directorship Company. If the other insurance is provided by the **insurer** then the total aggregate **limit of liability** for all **loss** covered by virtue of this extension shall be reduced by the **limit of liability** specified in the Other Policy.

Nothing contained in this endorsement shall be construed to increase the **limit of liability** of this policy, or the **limit of liability** of the Other Policy, which shall in all events, be the maximum liability of the **insurer** under this policy and the Other Policy respectively.

The cover provided under this Extension 4.3 shall not apply in connection with any **claim** made against any **insured** by the **outside entity** or the Shadow Directorship Company, any of their directors, officers, trustees, governors, or equivalent or any shareholder of the **outside entity** holding more than 20 per cent of the issued and outstanding voting share capital of the **outside entity** or the Shadow Directorship Company; provided, however, that restrictions of cover contained in this paragraph shall not apply to:

- (i) any **employment practice claim** brought by any director, officer, trustee or governor, or equivalent, of the **outside entity** or the Shadow Directorship Company;
- (ii) any **claim** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered by this extension;
- (iii) any shareholder derivative action brought or maintained on behalf of the **outside entity** or the Shadow Directorship Company without the solicitation or participation of any **insured** or any director, officer, trustee or governor, or equivalent, of the **outside entity** or the Shadow Directorship Company;

4.4 **Discovery period**

If the **insurer** refuses to offer any terms or conditions to renew this policy, or the **policyholder** refuses to renew this policy, then the **policyholder** shall have the right to a **discovery period** of 12 months following the effective date of non-renewal:

- (i) provided the **policyholder** cannot renew or replace this policy with or cannot purchase, effect or otherwise acquire, any other policy affording directors and officers liability or similar liability cover; and
- (ii) upon payment of an additional premium of 100% of the **full annual premium**.

To purchase the **discovery period**, the **policyholder** must request its purchase in writing within 15 days of the termination date of the policy and must tender the additional premium within 30 days of the termination date. The additional premium is not refundable and the **discovery period** is not cancellable.

If a **transaction** takes place, then the **policyholder** shall not have the right to purchase a **discovery period** as set out above. However, the **policyholder** shall have the right within 30 days of the end of the **policy period** to request an offer from the **insurer** of a **discovery period** of up to 72 months. The **insurer** shall have the right but not the duty to offer a **discovery period** with terms, conditions and premium as the **insurer** may reasonably decide.

No **discovery period** of any length is available in the event of this policy being cancelled due to non payment of premium.

4.5 Heirs, Estates and Legal Representatives

If an **insured** dies, becomes incompetent, insolvent or bankrupt, this policy shall cover **loss** arising from any **claim** made against the estate, heirs, or legal representatives of the **insured** for any **wrongful act** of such **insured**.

4.6 Joint Property Liability

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

Applicable to Insurance Cover D only

Subject to all of the terms and conditions of this policy, cover is extended as follows with respect to Insurance Cover D only:

4.7 Direct financial loss Investigation Fees

The **insurer** shall pay, in addition to the **crime limit of liability** and in excess of the **crime retention**, up to £5,000 in the aggregate, fees, costs and expenses reasonably incurred by the **company**, with the prior written consent of the **insurer**, in establishing the facts relating to a covered **direct financial loss** sustained, in accordance with the terms and conditions of this policy.

4.8 New Entities

If the total turnover of the **company**, as declared at the **inception date**, increases by more than 15% due to any of the following:

- (i) creation of a new entity; or
- (ii) any merger or acquisition;

then the cover provided under Insurance Cover D shall only apply if:

- (a) the **company** gives the **insurer** written notice within 30 days of its occurrence;
- (b) such entity is not involved in or is a legal partnership, gambling establishment, jeweller & precious metal dealer, IT, pharmaceuticals, bio-tech, outsourcing **company**, transit **company**, cash carrying **company** and is not a financial organisation;
- (c) such entity's business activities are confined to the UK;
- (d) the **company** confirms, to the satisfaction of the **insurer**, that no **direct financial losses** amounting to more than the **crime retention** have occurred that are or would have been covered under a policy of a similar type within the last 5 years;
- (e) the **company** pays the **insurer** an additional premium calculated pro-rata from the date of the occurrence of any event stated in clause (i) or (ii) of this extension.

Cover for any **direct financial loss** sustained by any new entity pursuant to this extension shall only apply while such new entity is part of the **company** and only to the extent of covered **direct financial loss** with respect to acts committed after the date of the occurrence of any event stated in clause (i) or (ii) of this extension, unless otherwise agreed in writing by the **insurer**.

4.9 Reconstitution costs

The **insurer** shall pay, as part of the **crime limit of liability**, up to £10,000 in the aggregate, incurred by the **company** with the prior written consent of the **insurer** for the cost of rewriting or amending the **company's** software programs or systems with where such rewriting or amending is necessary to correct the programs or systems following **direct financial loss** covered under this policy.

4.10 Identity fraud

The **insurer** shall indemnify the **company**, as part of the **crime limit of liability**, up to £5,000 in the aggregate, for:

- (i) **stolen identity expenses;**
- (ii) civil or **criminal defence costs;**
- (iii) **enquiry agent fees;**
- (iv) **reconstitution costs;** and
- (v) **reputation recovery expenses;**

resulting from an **identity fraud** relating to **corporate identity**.

4.11 Ownership and Care, Custody and Control

The **insurer** shall indemnify the **company** in respect of a liability owed to a third party resulting from **direct financial loss** of **money**, securities or other property belonging to any other individual or organisation, but which is in the care custody or control of the **company** and for which the **company** is liable.

5. General Provisions

Applicable to all Insurance Covers

The following general provisions are applicable to Insurance Covers A, B, C and D:

5.1 Representation and Severability and Non-Avoidance

In granting cover to any one **insured**, the **insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and shall be considered incorporated and constituting part of this policy.

With respect to Insurance Covers A and B, the proposal shall be construed as a separate proposal by each of the **insured**. With respect to statements and particulars in the proposal, no statements made or knowledge possessed by any **insured person** shall be imputed to any other **insured person** to determine whether cover is available for any **claim** made against such other **insured person**; only the statements and knowledge of any chief executive officer, chief operating officer or chief legal officer (or equivalent positions) of a **company** shall be imputed to that **company**, and the knowledge of the same officers of the **policyholder** will be imputed to all companies.

The **insurer** irrevocably waives any right it may have to rescind or avoid this policy, or any severable part of this policy, pursuant to this General Provision 5.1, on the grounds of innocent or negligent non-disclosure, or innocent or negligent misrepresentation by any **insured**.

5.2 Changes in Risk During Policy period

- (i) Cover for any **claim** against any **company** or any **insured person** shall apply only for **wrongful acts** or events occurring or **loss discovered** while such **company** is a **subsidiary** of the **policyholder** and while such **insured person** serves in an **insured person** capacity. However, with respect to a **subsidiary**, the **policyholder** may request an extension of cover for **wrongful acts** with respect to Insurance Covers A,B and C only and fraudulent or dishonest acts with respect to Insurance Cover D only, committed prior to the acquisition of such **subsidiary** by the **policyholder**, provided that the **policyholder** shall give the **insurer** sufficient details to permit the **insurer** to assess and evaluate the **insurer's** potential increase in exposure. If cover is subsequently extended pursuant to this clause, the **insurer** shall be entitled at its sole discretion to amend the policy terms and conditions, during the **policy period**, including by the charging of reasonable additional premium.
- (ii) Cover under Insurance Cover D of this policy shall cease with respect to any **employee** as soon as any **responsible person** of such **company** shall first learn of any dishonest or fraudulent act.
- (iii) If during the **policy period**, the **company**, any **outside entity** or any **Affiliate** decides to make an initial offering of its securities in any jurisdiction, whether its securities are already traded or not, by any means, public or private, or if the **company** decides to purchase securities of a **publicly traded entity** in a **transaction** which will result in such entity becoming an **Affiliate** or **subsidiary**, then as soon as the information is publicly available, the **company** shall provide the **insurer** with any prospectus or offering statement for the **insurer's** evaluation and assessment of the increased exposure of the **insured** and the **insurer** shall be entitled to amend the terms and conditions of this policy and/or charge a reasonable additional premium reflecting the increase in exposure.

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

- (iv) If during the **policy period a transaction** takes place, then the cover provided under this policy is amended to apply only to **wrongful act(s)** committed or **direct financial loss** first **discovered** prior to the effective date of the **transaction**.

5.3 Limit of liability

The **limit of liability** is the total aggregate limit of the **insurer's** liability for all **loss**, arising out of all **claims** made against all **insureds** under all Insurance Covers under this policy combined except with respect to Insurance Cover D. The **crime limit of liability** is a separate aggregate limit of the **insurer's** liability with respect to Insurance Cover D only and it is in addition to, and not part of, the **limit of liability**.

The **insurer** shall have no liability in excess of the **limit of liability** or the **crime limit of liability** irrespective of the number of **insureds, claims** or **direct financial loss** made during the **policy period** or **discovery period**, if applicable. The **Epl sub-limit of liability** and **pollution sub-limit of liability** are part of and not in addition to the **limit of liability**. **Defence costs** are part of **loss** and are part of and not in addition to the **limit of liability**.

Any sum paid by Chartis Insurance UK Limited under this policy shall erode either the **limit of liability** or the **crime limit of liability**. In no circumstances shall the liability of Chartis Insurance UK Limited exceed either the **limit of liability** or the **crime limit of liability**.

5.4 Retention

The **insurer** shall only be liable for the amount of **loss** arising from a **claim** which is in excess of the **retention** amount specified in Item 4 of the Schedule. The **retention** is to be borne by the **company** and shall remain uninsured. A single **retention** shall apply to all **loss** arising from any **claim** or series of **claims** arising out of, based upon or attributable to continuous, repeated or related **wrongful acts**. With respect to Insurance Cover D, a single **crime retention** shall apply to all **direct financial loss** arising out of, based upon or attributable to continuous, repeated or related acts or arising from one occurrence.

5.5 Subrogation

In the event of any payment under this policy, the **insurer** shall be subrogated to the extent of such payment to all of the **insured's** rights of recovery in respect of the payment, and all **insureds** shall execute all papers required and shall do everything that may be necessary to secure any rights including the execution of any documents necessary to enable the **insurer** effectively to bring suit in the name of any **insured**.

5.6 Other Insurance

Unless otherwise required by law, any insurance as is provided under this policy shall apply only as excess over any other valid and collectible insurance.

5.7 Contract Rights

It is hereby understood and agreed that Pursuant to Section 1(a) and Section 1(2) of the Contracts (Rights of Third Parties) Act 1999, nothing in this policy is intended to confer a directly enforceable benefit on any party other than the **insured**.

5.8 Notice and Authority

It is agreed that the **policyholder** shall act on behalf of all **insureds** with respect to the giving and receiving of notice under this policy, including the giving of notice of **claim** and proof of **direct financial loss**, the payment of premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to a **discovery period**.

5.9 Assignment

This policy and any rights hereunder cannot be assigned without written consent of the **insurer**.

5.10 Plurals and Titles

The titles of these paragraphs are for convenience only and do not lend any meaning to this contract. In this policy words in italics have special meaning and are defined.

Applicable to Insurance Covers A, B and C only

The following general provisions are applicable to Insurance Covers A, B, C only:

5.11 How to Give Notice and Report a Claim

In respect of Insurance Cover A, B and C:

- (i) Notice of a **claim** or of circumstances which may result in a **claim** shall be given in writing to Financial Lines Claims, Chartis Insurance UK Limited, The Chartis Building, 2-8 Altyre Road, Croydon CR9 2LG, or by facsimile to +44 208 680 7204. If posted the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.
- (ii) The **company** or the **insured person** shall, as a condition precedent to the obligations of the **insurer** under this policy, give written notice to the **insurer** of any **claim** or made against an **insured** as soon as practicable and either:
 - (a) any time during the **policy period** or during the **discovery period**;
 - or
 - (b) within 30 days after the end of the **policy period** or the **discovery period**, as long as such **claim(s)** is reported no later than 30 days after the date such **claim** was first made against an **insured**.
- (iii) If, during the **policy period** or during the **discovery period** written notice of a **claim** against an **insured** has been given to the **insurer** pursuant to the terms and conditions of this policy, then any **claim** arising out of, based upon or attributable to the facts alleged in the **claim** previously notified to the **insurer** or alleging a **single wrongful act** which is the same as or related to any **wrongful act** alleged in the previously notified **claim**, shall be considered made against the **insured** and reported to the **insurer** at the time the first notice was given.

- (iv) If during the **policy period** or during the **discovery period**, the **company** or the **insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **claim** being made against an **insured** and shall give written notice to the **insurer** of the circumstances and the reasons for anticipating a **claim**, with full particulars as to dates and persons involved, then any **claim** which is subsequently made against an **insured** and reported to the **insurer** arising out of, based upon or attributable to the circumstances or alleging any wrongful act which is the same as or related to any **wrongful act** alleged or contained in those circumstances, shall be considered made against the **insured** and reported to the **insurer** at the time the notice of the circumstances was first given.

5.12 Advancement of Costs

The **insurer** shall advance to the **insured person** or the **company defence costs** under this policy before the final disposition of the **claim**.

The advance payments by the **insurer** shall be repaid to the **insurer** by the **company** or the **insured person**, severally according to their respective interests, in the event and to the extent that the **company** or the **insured person** shall not be entitled to payment of the **loss** under the terms and conditions of this policy.

In the event and to the extent that the **company** is permitted or required to indemnify the **insured person** but for whatever reason fails to do so, the **insurer** will advance all **defence costs** to the **insured person** on behalf of the **company**. In this case, however, the **retention** shall be repaid by the **company** to the **insurer**, unless the **company** is insolvent.

5.13 How Defence Will Be Conducted

The **insured** shall have the right and duty to defend and contest any **claim**. The **insurer** shall have the right to effectively associate with the **insured** and the **company** in the defence and settlement of any **claim** that appears reasonably likely to involve the **insurer**, including but not limited to effectively associating in the negotiation of any settlement.

The **insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **defence costs** without the prior written consent of the **insurer** as a condition precedent to the **insurer's** liability for **loss** arising out of the **claim**. Only those settlements, stipulated judgments and **defence costs** which have been consented to by the **insurer** shall be recoverable as **loss** under the terms of this policy.

The **insurer's** consent shall not be unreasonably withheld, provided that the **insurer** shall be entitled to effectively associate in the defence and the negotiation of any settlement of any **claim** in order to reach a decision as to reasonableness.

The **company** and the **insured** shall give the **insurer** full co-operation and all information as it may reasonably require as a condition precedent to the **insurer's** liability for **loss** arising out of the **claim**. In the event that a dispute arises between the **insurer** and the **insured** regarding whether or not to contest any legal proceedings, neither the **insured** nor the **company** shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (to be mutually agreed by the **policyholder** and the **insurer**) shall advise that the proceedings should be contested. The cost of the Queen's Counsel shall be borne by the **insurer**.

5.14 Allocation

- (i) The **insurer** has no obligation under this policy for **defence costs** incurred by the **company**, or any judgments rendered against or settlements by the **company**, or any obligation to pay **loss** arising out of any legal liability that the **company** has to the third party claimant. Accordingly, with respect to:
 - (a) **defence costs** jointly incurred by;
 - (b) any joint settlement made by; and/or
 - (c) any adjudicated judgment of joint and several liability rendered against

the **company** and any **insured person**, the **company** and the **insured person** and the **insurer** agree to use their best efforts to determine a fair and proper allocation of the amounts as between the **company** and the **insured person** and the **insurer**, taking into account the relative legal and financial exposures of and the relative benefits obtained by the **insured** and the **company**.

In the event that any **claim** involves both covered matters and matters not covered under this policy, a fair and proper allocation of any **defence costs**, judgments and/or settlements shall be made between the **company**, the **insured person** and the **insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

- (ii) In the event that a determination as to the amount of **defence costs** to be advanced to the **insured** under this policy cannot be agreed to, then the **insurer** shall advance **defence costs** which the **insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

Applicable to Insurance Cover D only

The following general provisions are applicable to Insurance Cover D only:

5.15 How to Give Notice and Report a Direct financial loss:

Upon **discovery** of a **direct financial loss** or of an act or series of related acts which may give rise to a **direct financial loss** potentially covered by this policy, the **company** shall:

- (i) give notice thereof as soon as practicable to the **insurer** or any of its authorised agents; and
- (ii) file detailed proof of **direct financial loss** (which includes but is not limited to a completed proof of **loss** form in the format agreed by the **company**) with the **insurer**, within 3 months after first **discovery** of **direct financial loss**, or within such further period as agreed to in writing by the **insurer**; and
- (iii) provide all requested information and documents and co-operate with the **insurer** in all matters pertaining to **direct financial loss**.

The **insurer** shall not be liable to make any payment for **direct financial loss** or that part of any **direct financial loss** where the proof of such, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and **loss** computation alone.

All such correspondence shall be given in writing to Financial Lines Claims, Chartis Insurance UK Limited, The Chartis Building, 2-8 Altyre Road, Croydon CR9 2LG, or by facsimile to +44 208 680 7204. If posted the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

5.16 Basis of Valuation

In determining the amount collectable under this policy for any **direct financial loss**, deductions shall be made in respect of any property received from any source whatsoever, including payments and receipt of principal, interest, dividends, commissions and the like, whenever received, in connection with any matter from which an indemnifiable **direct financial loss** has arisen.

In no event shall the **insurer** be liable under this policy for more than:

- (i) the actual market value, determined by that published in the Financial Times in the United Kingdom or equivalent local daily financial newspaper of securities, foreign funds, currencies or precious metals at the close of business on the day the **direct financial loss** was **discovered**, or, if less, the actual cost of replacing the securities;
- (ii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **company** in order to reproduce books of accounts and records;
- (iii) the actual cash value of other property at the time of **direct financial loss** or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less.

5.17 Discovery period

Direct financial loss is covered under this policy only if first **discovered**:

- (i) during this **policy period**; or
- (ii) not later than 12 months following:
 - (a) the termination of this policy; or
 - (b) termination of any coverage part of this policy which applies to such **direct financial loss**; or
 - (c) cancellation or termination of this policy as to any **company** provided that this policy is not replaced with any fidelity or crime policy. In the event that this policy is replaced by any fidelity or crime policy no **discovery period** shall apply.

5.18 Recoveries

Recoveries, less the actual cost of recovery, made after **direct financial loss** will be distributed as follows; first, the **company** shall be reimbursed for **direct financial loss** exceeding the **crime limit of liability** or settlement (whichever is less) and the **crime retention** amount (if applicable); second, the **insurer** shall be reimbursed for the settlement made; third, the **company** shall be reimbursed for **direct financial loss** equal to the **crime retention** amount.

5.19 The Company's procedures

As a condition precedent to cover for any **direct financial loss** the **company** shall at all times comply with the following conditions:

- (i) The statutory accounts are independently audited and any recommendations implemented within an agreed timeframe.
- (ii) Stock is independently checked, (at least once every six months) by an **employee** not responsible for daily stock handling or ordering.
- (iii) The verification and authentication of all invoices are undertaken by separate **employees** and full supporting documentation is provided.
- (iv) Cheque requisition/payment instructions and payment authorization are segregated functions undertaken by separate people.

- (v) There is independent verification of supporting documentation before cheque or payment instructions are authorised.
- (vi) Two authorised **employee** signatures are required on all cheque and payment instructions exceeding £500 in value.
- (vii) Cash in hand and petty cash shall be checked independently of the **employee** responsible at least monthly.
- (viii) Independent monthly reconciliations are performed on all bank accounts and debtors accounts by persons not responsible for the day to facilitation of such accounts.
- (ix) The **company** shall obtain written and/or verbal references covering the whole of the preceding two years of employment in confirmation of honesty of all **employees** with responsibility for **money** and/or property engaged on or after the first **inception date** of the policy. Such references shall be obtained independently of the **employee** and retained on the **employee's** personnel file.
- (x) Authorising and amendment to funds transfer procedures or funds transfer instructions is subject to a full segregation procedure so that no one **employee** is responsible for the funds transfer **transaction** from commencement to completion.

The **insurer** shall only be entitled to rely on any condition precedent referred to in (i) to (x) above in respect of any **direct financial loss** where such direct financial **loss** or any part of such **direct financial loss** arises out of, is based upon or attributable to any failure by the **company** to comply with such condition precedent.