

POLICY DOCUMENT

**EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY
WITH OPTIONAL THIRD PARTY COVERAGE**

PLEASE NOTE:

THIS IS A CLAIMS MADE POLICY.

THE COVER PROVIDED BY THIS POLICY IS AFFORDED SOLELY WITH RESPECT TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR ANY DISCOVERY PERIOD PURCHASED

THE NAMED COMPANY IS REQUESTED TO READ THIS POLICY AND SCHEDULE CAREFULLY. IF IT IS INCORRECT PLEASE RETURN IT IMMEDIATELY FOR ALTERATION TO FITZWILLIAM HOUSE, 10 ST. MARY'S AXE, LONDON, EC3A 8BF, UNITED KINGDOM.

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NOTICE: THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FOR WRONGFUL ACTS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR, IF APPLICABLE, THE DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED, AND MAY BE EXHAUSTED, BY THE PAYMENT OF DEFENCE COSTS. DEFENCE COSTS WILL BE APPLIED AGAINST THE RETENTION.

SCHEDULE

POLICY NUMBER:

ITEM 1 NAMED COMPANY:

- (a) Name:
- (b) Principal Address:

ITEM 2 POLICY PERIOD:

- (a) Inception Date:
- (b) Expiration Date:

both days inclusive at local standard time at the Principal Address stated in ITEM 1.

ITEM 3 INSURING AGREEMENTS:

Only Insuring Agreements indicated as COVERED below are provided under this Policy. NOT COVERED means not purchased.

INSURING AGREEMENT (A)	COVERED
INSURING AGREEMENT (B)	COVERED/NOT COVERED

ITEM 4 LIMIT OF LIABILITY (INCLUSIVE OF DEFENCE COSTS):

EUR [•] in the aggregate, for all insurance covers combined

ITEM 5 AGGREGATE SUB-LIMITS

- (a) Extension (F) Reputational Mitigation Costs EUR [•]
- (b) Extension 4(G) Emergency Costs EUR [•]

ITEM 6 RETENTIONS:

- (1) Insuring Agreement (A):
 - (a) **Claims** brought or maintained within the jurisdiction of or under

any laws of the United States of America:

- **Class Action:** USD [] each and every **Claim**.
- **Claims** other than **Class Action:** USD [] each and every **Claim**.

(b) **Claims** brought or maintained outside the jurisdiction of and under other laws than those of the United States of America: EUR [] each and every **Claim**.

(2) Insuring Agreement (B): EUR [] each and every **Claim**.

ITEM 7 PREMIUM: EUR [] plus applicable tax

ITEM 8 INSURER DETAILS:

HCC INTERNATIONAL INSURANCE COMPANY PLC
Authorised by the UK Prudential Regulation Authority
(PRA) and regulated by the PRA and the UK Financial
Conduct Authority (FCA)
1 Aldgate, London, EC3N 1RE
United Kingdom

ITEM 9 REQUIRED NOTICES TO BE ADDRESSED TO:

HCC GLOBAL FINANCIAL PRODUCTS, S.L.
Torre Diagonal Mar
Josep Pla, 2, 10th floor
08019 Barcelona – Spain
Attention: Claims Manager

ITEM 10 APPLICABLE LAW AND EXCLUSIVE JURISDICTION:

- (a) Applicable Law:
- (b) Exclusive Jurisdiction:

ITEM 11 CONTINUITY DATE – PRIOR AND PENDING LITIGATION:

ITEM 12 DISCOVERY PERIOD:

(a) Automatic **Discovery Period:**

- (i) Duration: [] months after the Expiration Date
- (ii) Additional Premium: [] % of the premium stated in ITEM 7 of the SCHEDULE

(b) Automatic **Discovery Period** for **Retired Directors:**

(i) Duration: 120 months after the Expiration Date

(ii) Additional Premium: NIL

(c) Optional **Discovery Periods:**

Option 1:

(i) Duration: [•] months after the Expiration Date

(ii) Additional Premium: [•] % of the premium stated in ITEM 7 of the SCHEDULE

Option 2:

(i) Duration: [•] months after the Expiration Date

(ii) Additional Premium: [•] % of the premium stated in ITEM 7 of the SCHEDULE

ITEM 13 ENDORSEMENTS ATTACHED AT ISSUANCE:

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be signed in the SCHEDULE by a duly authorised representative of the **Insurer**.

THIS IS A CLAIMS MADE POLICY. PLEASE READ IT CAREFULLY.

In consideration of the payment of the premium or agreement to pay the premium, in reliance upon the information, particulars and statements contained or referred to in the **Proposal**, which are deemed to be incorporated in and to form part of this Policy, and subject to the terms, conditions, definitions and exclusions and any endorsements attached to this Policy, the **Insurer** and the **Named Company** agree as follows:

1. INSURING AGREEMENTS

- (A) The **Insurer** will pay to or on behalf of each **Insured** all **Loss** arising from a **Claim** first made during the **Policy Period** (or **Discovery Period**, if applicable) against such **Insured** for an **Employment Practices Wrongful Act**.
- (B) The **Insurer** will pay to or on behalf of each **Insured** all **Loss** arising from a **Claim** first made during the **Policy Period** (or **Discovery Period**, if applicable) against such **Insured** for a **Third Party Wrongful Act**.

2. DEFINITIONS

- (A) **Change in Control** means:
 - (1) the appointment of a receiver, administrator, or liquidator, or the equivalent in any jurisdiction, by or on behalf of the **Named Company**, or the **Named Company** entering into any scheme of arrangement with its creditors; or
 - (2) the **Named Company's** merger with or consolidation into any other company; or
 - (3) any person or company, acting alone or in concert acquiring:
 - (a) ownership or control or assuming control pursuant to a written agreement with other shareholders of more than 50% of the voting rights in the **Named Company** and/or more than 50% of the outstanding securities representing the present right to vote for the election of the board of directors of the **Named Company** and/or assuming the right to appoint or remove the majority of the board of directors of the **Named Company**; or
 - (b) ownership of all or the majority of the **Named Company's** assets.
- (B) **Claim** means:
 - (1) any written demand seeking monetary or non-monetary relief; or
 - (2) any written request or agreement to stay, suspend or toll any applicable statute of limitations; or
 - (3) any civil proceeding (including any tribunal proceeding) commenced by service of a complaint, including any claim form, writ of summons, counterclaim, cross-claim or similar process and any appeal therefrom; or
 - (4) any criminal proceeding commenced by indictment or similar process, including any appeal therefrom; or
 - (5) any arbitration, mediation or other similar dispute resolution proceeding; or

- (6) any administrative or regulatory proceeding, including proceedings before the United States Equal Employment Opportunity Commission ("EEOC") or any similar agency of any state or local government in the United States of America or any similar agency in any other jurisdiction, commenced by the filing of a notice of charges, formal investigative order or similar document,

made or brought against an **Insured** for a **Wrongful Act**.

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

(C) **Class Action** means any **Claim**:

- (1) by or on behalf of five (5) or more claimants; or
- (2) by or on behalf of less than five (5) claimants if:
 - (a) the **Claim** is a "collective action" or "class action" or similar under the law applicable to the proceedings; or
 - (b) the **Claim** can be prosecuted only by virtue of the issuance by the competent judicial authority of class certification; or
 - (c) the **Claim** alleges the existence of a repeated pattern of behaviour or systematic discrimination and seeks remedy or relief on behalf of a group of individuals; or
- (3) by any one or more of the following:
 - (a) The EEOC or a similar body in any other jurisdiction; or
 - (b) any state, federal, local or provincial organisation or agency or equivalent in any jurisdiction, where the **Claim** alleges a repeated pattern of behaviour or systematic discrimination and seeks remedy or relief on behalf of a group of individuals.

(D) **Company** means the **Named Company** or any **Subsidiary**.

(E) **Defence Costs** means any reasonable and necessary legal and other professional fees, costs and expenses (including any reasonable premium but not the collateral for any appeal bond, attachment bond or similar bond) incurred with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed) which the **Insured** is legally liable to pay resulting from the investigation, adjustment, defence or appeal of or otherwise participating in a **Claim** but excluding any salaries, wages, benefits, overhead expenses or internal costs of any **Insured**.

(F) **Discovery Period** means the period indicated in ITEM 12 of the SCHEDULE and commencing immediately after the Expiration Date stated in ITEM 2(b) of the SCHEDULE.

(G) **Employee** means, with respect to any entity, any:

- (1) natural person compensated by salary, wages or commissions and whose labour or service is engaged and directed by such entity under a contract of service, including leased, seasonal, temporary contract and part-time employees, and;

- (2) natural person who is engaged under a contract for services by such entity, or who is an independent contractor but only if the such entity is obligated to provide indemnification to them in the same manner as it is obligated to provide indemnification to its employees; and
 - (3) natural person who is a volunteer, intern or student, whose labour or service is directed by such entity;
- (H) **Employment Practices Wrongful Act** means any of the following in connection with the employment or prospective employment of any past, present or prospective **Employee** by the **Company** or an **Outside Entity**:
- (1) discrimination, including but not limited to discrimination on the ground of race, colour, religion or belief, age, gender, sexual orientation or preference, national origin, pregnancy, disability, part-time or fixed term status or other protected status; or
 - (2) sexual or other unlawful harassment, including unwelcome sexual advances, requests for sexual favour or other physical or verbal conduct of a sexual nature, that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance in, or creates an intimidating, hostile or offensive working environment within the **Company** or an **Outside Entity**; or
 - (3) unfair or wrongful dismissal, discharge or termination of employment (including constructive dismissal), or breach of implied, oral or written employment contract; or
 - (4) wrongful deprivation of career opportunity, wrongful demotion, wrongful change in employment status, failure to hire or promote, or failure to grant tenure; or
 - (5) wrongful discipline or employee evaluation; or
 - (6) defamation (including but not limited to libel and slander), malicious falsehood, invasion of privacy, breach of confidentiality; or
 - (7) **Retaliation**; or
 - (8) negligent hiring, supervision, retention or training; or
 - (9) wrongful failure to adopt or to comply with adequate workplace or employment policies or procedures; or
 - (10) misrepresentation, false imprisonment, infliction of emotional distress; or
 - (11) employment-related breach or violation of or non-compliance with, laws or regulations for the protection of personal data.

committed or allegedly committed by a **Company** or by an **Insured Person** in their capacity as such, and regardless if committed or allegedly committed through the internet, electronic mail or other electronic means of communication.

- (I) **Insured** means any **Insured Person** or any **Company**.
- (J) **Insured Person** means any:

- (1) past, present or future director or officer of the **Company** including any person in a position which is the functional equivalent thereof; and
- (2) past, present or future **Employee** of the **Company**; and
- (3) **Outside Director**.

Insured Person shall not include an external auditor, a liquidator or an insolvency office-holder of the **Company**.

(K) **Insurer** means the entity named in ITEM 8 of the SCHEDULE.

(L) **Limit of Liability** means the amount stated in ITEM 4 of the SCHEDULE.

(M) **Loss** means:

- (1) **Defence Costs**; and
- (2) any amounts that an **Insured** is legally obliged to pay as a result of any **Claim** including:
 - (i) damages including aggravated, punitive or exemplary damages and the multiplied portion of any multiplied damage award where lawfully insurable by the laws of the jurisdictions in which such sums are payable and in which such sums were ordered to be paid back pay awards and front pay awards but only in relation to a **Claim** made or brought in the United States of America; liquidated damages awarded under the United States Age Discrimination in Employment Act or the United States Equal Pay Act; and
 - (ii) awards, judgments, pre-and post-judgment interest, awards of claimants' costs and sums payable pursuant to any settlements with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed).

Loss will not include:

- (a) taxes, fines and penalties or any amounts which are deemed uninsurable under the laws of the jurisdictions in which such sums are payable or in which such sums were ordered to be paid; or
- (b) amounts payable in respect of contractual or statutory notice periods; or
- (c) compensation earned by the claimant in the course of employment, but not paid by the **Company** (including but not limited to unpaid wages, salaries, overtime, commissions, bonus or incentive payments, reimbursement of **Employee's** expenses, social security contributions, national insurance contributions, vacation or holiday pay or sick pay); or
- (d) employment-related benefits including perquisites, fringe benefits, payments in respect of any employee benefit plan or pension scheme, incentives or deferred compensation and any other type of compensation other than salary, wages, commissions or bonus compensation and the monetary value of any unvested stock options, subject to the limitations in this DEFINITION (M)(2)(f);
- (e) severance or redundancy pay; or

- (f) stock, stock options, stock warrants of any kind owed pursuant to any offering, plan or agreement or any other incentive or compensation (including deferred compensation) whose value is imputed or derived from the value of the securities of a **Company**, except and to the extent that a judgment, award or settlement of a **Claim** includes a monetary component measured by the value of stock options or security which did not vest due to the actual or alleged wrongful termination of the claimant; or
 - (g) any amount for which the **Insured** is not legally liable; or
 - (h) medical or insurance benefits, social security (or the equivalent thereof) to which a claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance; or
 - (i) costs associated with complying with an order, judgment or award of, or agreement to provide, non-monetary relief, or any additional compensation awarded for non-compliance with such an order, judgment, award or agreement, including costs associated with complying with any order for reengagement or reinstatement or for adapting or adjusting any premises or working methods to meet the needs of any person with a disability or in connection with the provision of education or training following a **Claim** for a **Wrongful Act**.
- (N) **Named Company** means the entity designated as such in ITEM 1 of the SCHEDULE.
- (O) **Outside Director** means any director or officer of the **Company** who, at the specific request of the **Company**, serves as a director, officer, trustee, regent or governor of or in another equivalent executive position with an **Outside Entity**.
- (P) **Outside Entity** means:
- (1) any organisation, association or entity, run on a non-profit basis during any time any person serves as an Outside Director therein; or
 - (2) any organisation, association, or entity in which a **Company** owns any but not more than 50% of the issued and outstanding shares representing the right to vote for the election of such **Outside Entity**'s directors.
- Outside Entity** shall not include:
- (a) any organisation, association or entity having negative equity; or
 - (b) any organisation, association or entity which must comply with the laws of, or has employees residing or doing business in, the United States of America.
- (Q) **Policy Period** means the period set forth in ITEM 2 of the SCHEDULE, subject to prior cancellation pursuant to GENERAL CONDITION (C).
- (R) **Proposal** means (i) any publicly available annual financial statements, including the annual report, of the Policyholder, (ii) any document, information or statement made available to the **Insurer** for the purpose of its assessment of the risk to be covered under this Policy, and (iii) any attachments, exhibits, or appendices to any of the documents referred to in (i) and (ii).
- (S) **Retaliation** means any act of an **Insured** committed or allegedly committed against an **Employee** on account of such **Employee** exercising any rights in law, refusing to breach any law, opposing any unlawful practice, disclosing or threatening to disclose

an alleged breach of law or assisting in, testifying in, or cooperating with a proceeding or investigation regarding an alleged breach of law.

- (T) **Retention** means any of the amounts set out at ITEM 6 of the SCHEDULE, as applicable.
- (U) **Retired Director** means a director or officer of the **Company** who voluntarily ceased to hold such office prior to the Expiration Date as stated in ITEM 2(b) of the SCHEDULE other than a disqualified director or where directly related to a **Change in Control**.
- (V) **Subsidiary** means:
- (1) any entity in which at or before the inception of the **Policy Period** the **Named Company** either directly or through one or more **Subsidiaries**:
 - (a) owns more than 50% of the issued and outstanding shares; or
 - (b) controls more than 50% of the voting rights; or
 - (c) controls the right to vote for the election or removal of the majority of the board of directors;
 - (2) by way of automatic extension and from the date of such transaction any entity created or acquired by the **Named Company** or any **Subsidiary** during the **Policy Period** in respect of which, at least one of (1)(a), (1)(b) or (1)(c) above applies, provided that at the time of such transaction:
 - (a) if such entity is created or acquired outside the United States of America and Canada, the total number of such entity's employees does not exceed 20% of the total number of **Employees** of the **Named Company** and all **Subsidiaries** as reflected in the **Proposal**; or
 - (b) if such entity is created or acquired in the United States of America or Canada, the total number of such entity's employees does not exceed 20% of the total number of **Employees** of the **Named Company** and all **Subsidiaries** in the United States of America or Canada as reflected in the **Proposal**.
- For the avoidance of doubt:
- (i) the coverage under this Policy shall benefit only entities or natural persons employed or appointed by such entities in respect of **Claims** for **Wrongful Acts** actually or allegedly committed during the time that such entities are or were **Subsidiaries** as defined above; and
 - (ii) an entity ceases to be a **Subsidiary** when none of the provisions set out in (1)(a) to (1)(c), above applies to it.
- (W) **Third Party** means any natural person, other than an **Insured Person**, with whom an **Insured** interacts.
- (X) **Third Party Wrongful Act** means:
- (1) discrimination against a **Third Party** including but not limited to discrimination on the grounds of race, colour, religion or belief, age, gender, sexual

orientation or preference, national origin, disability, pregnancy or other protected status; or

(2) sexual or other unlawful harassment against a **Third Party**,

committed or allegedly committed by a **Company** or by an **Insured Person** in their capacity as such.

(Y) **Wrongful Act** means an **Employment Practices Wrongful Act** and, if optional INSURING AGREEMENT (B) is purchased, a **Third Party Wrongful Act**.

3. EXCLUSIONS

The **Insurer** will not be liable to make any payment of **Loss** in connection with a **Claim**:

(A) **UNLAWFUL CONDUCT**

Arising out of, based upon or attributable to the commission by the **Insured** of any deliberately fraudulent, dishonest or criminal act.

Provided always that this EXCLUSION (A) shall only apply where such **Insured's** behaviour is established in a final adjudication in any action or proceeding in the **Claim** or by written admission of such **Insured**.

(B) **BODILY INJURY AND PROPERTY DAMAGE**

For any actual or alleged bodily injury, mental illness, sickness, disease or death of any person or damage to or destruction of any tangible property, including the loss of use thereof, provided that this exclusion shall not apply to emotional distress or mental anguish caused by any **Wrongful Act**.

(C) **PRIOR NOTICE**

Arising out of, based upon or attributable to facts or circumstances underlying or alleged in or to the same or related or continuous or repeated **Wrongful Acts** alleged or contained in any claim which has been reported, or in any circumstances in respect to which any notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time.

(D) **PRIOR OR PENDING LITIGATION**

Arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, demand or adjudication which was pending against any **Insured** on or prior to the Continuity Date set forth in ITEM 11 of the SCHEDULE, or alleging or derived from the same or essentially the same facts or circumstances or the same or related or continuous or repeated **Wrongful Acts** as alleged or contained therein.

(E) **WAGE AND HOUR**

Arising out of, based upon or attributable to any actual or alleged violation of any provision of any law or regulation of any country which regulates any minimum wages, working time, workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, pension plans, retirement benefits, social security, or any amendments thereto, or any other similar provisions of any federal, state or local statutory or common law or any laws, rules and regulations promulgated in any other relevant jurisdiction.

(F) CONTRACTUAL LIABILITY

Arising out of, based upon or attributable to any actual or alleged contractual obligation or liability assumed by an **Insured** pursuant to any express (written or oral) contract or agreement; unless (i) to the extent such **Insured** would be liable for such **Loss** in the absence of such contract or agreement, and with the exception of (ii) the monetary value of unvested stock options owed pursuant to any such agreement, subject to the limitations in DEFINITION (M)(2)(f).

(G) SPECIFIC ACTS EXCLUSION

Arising out of, based upon or attributable to any actual or alleged violation of any provision of:

- (1) the United States Employee Retirement Income Security Act of 1974 other than Section 510 thereof, the United Kingdom Pensions Act 1995 and the United Kingdom Pensions Act 2004; or
- (2) the United States Fair Labor Standards Act other than the United States Equal Pay Act; or
- (3) the United States National Labor Relations Act and the United Kingdom Trade Union and Labour Relations (Consolidation) Act 1992; or
- (4) the United Kingdom Transfer of Undertaking (Protection of Employment) Regulations 2006, the United States Worker Adjustment and Retraining Notification Act; or
- (5) the United States Consolidated Omnibus Budget Reconciliation Act of 1985;
- (6) the United States Occupational Safety and Health Act, or the United Kingdom Health and Safety at Work Act 1974; or
- (7) any law or regulation of any country which regulates relations with unions, labour relations, collective and non-collective redundancy procedures, health insurance, health and safety at work or disability benefits law or any amendments thereto,

or any other similar provisions of any federal, state or local statutory or common law or any laws, rules and regulations promulgated in any other relevant jurisdiction.

Provided that this EXCLUSION (G) shall not apply to any **Claim** for actual or alleged **Retaliation**.

4. EXTENSIONS

(A) DISCOVERY PERIOD

This Policy shall be extended to cover **Claims** first made subsequent to the **Policy Period** but during any applicable **Discovery Period**, solely for **Wrongful Acts** actually or allegedly committed before the Expiration Date stated in ITEM 2(b) of the SCHEDULE.

A **Discovery Period** shall be afforded under the following conditions:

- (1) If, subsequent to the expiration of the **Policy Period**, this Policy is not renewed or replaced by any other policy affording employment practices liability coverage, the **Insurer** will grant:
- (i) an automatic **Discovery Period** as stated in ITEM 12(a) of the SCHEDULE at no additional premium; and
 - (ii) an automatic **Discovery Period** as stated in ITEM 12(b) of the SCHEDULE solely for **Retired Directors** at no additional premium; and
 - (iii) subject to written request to this effect and payment of the applicable additional premium before the Expiration Date stated in ITEM 2(b) of the SCHEDULE by the **Named Company**, one of the optional **Discovery Periods** as stated in ITEM 12(c) of the SCHEDULE at the corresponding additional premium.

The additional premium shall be deemed to be fully earned as of the inception of the **Discovery Period**.

- (2) Any **Discovery Period** invoked shall be automatically cancelled upon the effective date or the date of execution of any other policy affording similar coverage to part or all of the Insureds, whichever is the earlier

Rights to a **Discovery Period** shall automatically lapse upon a **Change in Control**, however the **Insurer** may, at its sole discretion, quote for a run-off policy of up to seventy-two (72) months upon the written request of the **Named Company** on whatever terms, conditions and limitations the **Insurer** deems appropriate.

(B) ESTATES, HEIRS AND LEGAL REPRESENTATIVES

This Policy shall be extended to include as **Insured Persons** the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased or the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, to the extent that such person is subject to a proceeding solely by reason of an actual or alleged **Wrongful Act** of such deceased, incompetent, insolvent or bankrupt **Insured Person** and that such **Insured Person** would have been covered by this Policy for **Loss** in the absence of their death, incompetence, insolvency or bankruptcy.

(C) SPOUSE OR DOMESTIC PARTNERS

This Policy shall be extended to include as an **Insured Person** an **Insured Person's** lawful spouse or domestic partner, including same sex relationship civil partnerships in respect of claims for **Wrongful Acts** of the **Insured Person** provided such claims are made against such person solely by reason of their legal status as a spouse or domestic partner of the **Insured Person** or their ownership or interest in property which a claimant seeks as recovery for the alleged **Wrongful Acts** of the **Insured Person**.

For the purposes of the Policy, amounts which such lawful spouse or domestic partner becomes legally obligated to pay by reason of such **Claim** will be treated as **Loss** which the **Insured Person** is legally obligated to pay on account of the **Claim** made against the **Insured Person**. This coverage extension does not apply, however, to the extent the claim alleges any act, error, omission, misstatement, misleading statement, misrepresentation, misconduct, neglect or breach of duty by the **Insured Person's** spouse or domestic partner.

(D) NEW SUBSIDIARIES

If, during the **Policy Period**, the **Named Company** or any **Subsidiary** acquires or creates any entity in respect of which at least one of paragraph (1)(a), (1)(b) or (1)(c) in DEFINITION (V) of **Subsidiary** applies, and at the time of such transaction:

- (1) if such entity is created or acquired outside the United States of America and Canada, the total number of such entity's employees exceeds 20% of the total number of **Employees** of the **Named Company** as reflected in the **Proposal**;
or
- (2) if such entity is created or acquired in the United States of America or Canada, the total number of such entity's employees of exceeds 20% of the number of **Employees** of the **Named Company** in the United States of America or Canada as reflected in the **Proposal**,

such entity will be included as **Subsidiary** for a period of ninety (90) days after the date of such transaction.

However the **Insurer** may at its sole discretion subsequently include such entity as a **Subsidiary** upon the **Named Company's** providing, during the above mentioned period of ninety (90) days, sufficient details to permit the **Insurer** to properly assess and evaluate the potential increase in exposure and paying any additional premium required and accepting any additional terms, conditions and limitations which the **Insurer** may require. In case the **Insurer** decides not to subsequently include such entity as a **Subsidiary**, the entity will be considered as never having acquired the condition of **Subsidiary**.

No coverage will be available for **Loss**, including **Defence Costs**, from any **Claim** against any entity, or the **Insured Persons** of any entity, included as a **Subsidiary** by reason of this EXTENSION (D) for any **Wrongful Act** committed or allegedly committed before the date of such transaction.

(E) EXTRADITION PROCEEDINGS

This Policy shall be extended to include as **Claims** and, therefore, to cover **Loss** arising therefrom, any proceedings against an **Insured Person** following a request or arrest warrant for deportation or extradition, including an appeal or separate proceeding to overturn a deportation, extradition or arrest order, provided such request or arrest is not issued as a consequence of such **Insured Person** being unlawfully at large in any country or jurisdiction after final adjudication by the court of another country.

For the purposes of this EXTENSION (E) solely, such **Claim** shall be deemed first made upon receipt by the **Insured Person** of an official notice in writing from the responsible government authority advising of a request for extradition being made against them, or upon execution of a warrant for arrest of such **Insured Person**, whichever is the earlier.

(F) REPUTATIONAL MITIGATION COSTS

This Policy shall be extended to include as **Loss** the reasonable and necessary costs and expenses incurred by an **Insured** for the professional advice of a public relations consultant appointed with the **Insurer's** prior written consent to mitigate the adverse effect of a covered **Claim** against such **Insured**.

Cover under this EXTENSION (F) is subject to the maximum aggregate Sub-Limit stated in ITEM 5(a) of the SCHEDULE.

(G) EMERGENCY COSTS

The **Insurer** will waive the requirement for its prior written consent to the incurring of **Defence Costs** up to the maximum aggregate Sub-Limit stated in ITEM 5(b) of the SCHEDULE where it was not reasonably practicable for the **Insured** to seek the **Insurer's** prior written consent.

5. CLAIMS CONDITIONS

(A) NOTICE OF CLAIMS AND REPORTING PROVISIONS

- (1) The **Insured** shall give written notice, including full details, to the **Insurer** of any **Claim** as soon as practicable within the **Policy Period** (or the **Discovery Period** if applicable) and, where it has not been reasonably practicable for the **Insured** to give such notice during the **Policy Period** (or the **Discovery Period** if applicable) then notice shall be given, in any event, no later than thirty (30) days after the date of expiration of the **Policy Period** (or the **Discovery Period** if applicable).
- (2) If written notice of a **Claim** has been given to the **Insurer** pursuant to CLAIMS CONDITION (A)(1) above, then any **Claim** subsequently made against an **Insured** and reported to the **Insurer**, arising out of, based upon or attributable to the facts alleged in the **Claim** of which such notice has been given, or alleging the same or related or continuous or repeated **Wrongful Acts** as alleged in the **Claim** of which such notice has been given, will be deemed together with the earlier **Claim** to be a single **Claim** first made at the time the earlier **Claim** was made and to have been notified at the time the earlier **Claim** was notified to the Policy.
- (3) If, during the **Policy Period**, an **Insured** becomes aware of any circumstances which may give rise to a **Claim** against the **Insured** and if, before the end of the **Policy Period**, the **Insured** gives written notice to the **Insurer** of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, potential claimants and the consequences which have resulted or may result from such circumstances, then any **Claim** subsequently made against the **Insured** and reported to the **Insurer** arising out of, based upon or attributable to such circumstances will be deemed to have been first made and notified at the time the notice of circumstances was given.
- (4) All notices under this CLAIMS CONDITION (A) must refer to the Policy Number, must be in writing, must request coverage under this Policy, and be made to the address set forth in ITEM 9 of the SCHEDULE.
- (5) The **Insurer** shall be liable only in respect of **Claims** or circumstances notified in compliance with this CLAIMS CONDITION (A).

(B) INTERRELATIONSHIP OF CLAIMS

All **Claims**, arising out of, based upon or attributable to the same facts, or alleging the same or related or continuous or repeated **Wrongful Acts** shall be deemed to be a single **Claim** made at the time the earliest such **Claim** was made.

(C) DEFENCE, CHOICE OF COUNSEL, SETTLEMENT

- (1) The **Insurer** will have the right and duty to defend any **Claim** even if such **Claim** is groundless, false or fraudulent.
- (2) With the express written consent of the **Insurer** (which may not be unreasonably withheld or delayed), the **Insureds** may select defence counsel to defend any **Claim** other than a **Claim** that is a **Class Action**. With its request for consent to appointing such counsel the **Insured** shall provide the **Insurer**, in writing, with the name(s) of attorney(s), qualifications, experience, fees and rates, statements about conflicts or potential conflicts of interests, and further information which may be relevant to the representation. Otherwise, the **Insurer** will have the right to select defence counsel.
- (3) The **Insurer** may make any investigation it deems necessary and may, with the written consent of the **Insured** (which may not be unreasonably withheld and as provided in GENERAL CONDITION 6(B) make any settlement of a **Claim** it deems expedient.
- (4) The **Insured** shall not admit or assume any liability, make any offer to settle or enter into any settlement agreement, stipulate or consent to any judgment, pay any **Loss** or incur any **Defence Costs** without the **Insurer's** prior written consent (not to be unreasonably withheld or delayed); provided, that the **Insurer's** consent will not be required to settle any **Claim** if the total **Loss** incurred on account of such **Claim** does not exceed the applicable **Retention** amount set forth in ITEM 6 of the SCHEDULE. Only those settlements, stipulated judgments, judgments by consent and **Defence Costs** to which the **Insurer** has consented (if such consent is required) will be recoverable as **Loss** under the Policy.
- (5) The **Insured** shall provide to the **Insurer** all information, assistance and cooperation that the **Insurer** may reasonably request and shall do nothing to prejudice the **Insurer's** interests and shall assist the **Insurer** with any **Claim** or circumstances.
- (6) The **Insured** shall use due diligence and do and concur in all things reasonably practicable to avoid or diminish any **Loss**.

(D) ALLOCATION

- (1) Except as provided in (3) below, the **Insurer** will not seek to allocate, but rather will pay 100% of **Defence Costs** incurred by an **Insured** on account of any **Claim** that includes both covered and uncovered matters.
- (2) All remaining **Loss** incurred by the **Insured** on account of any such **Claim** shall be allocated by the **Insurer** and the **Insured** between covered **Loss** and not covered **Loss** based on the relative legal and financial exposures of the parties to the **Claim** and the relative benefits to be obtained by the resolution of the **Claim**.
- (3) Notwithstanding the above, **Defence Costs** incurred by an **Insured** on account of a **Claim** which is in part excluded from coverage pursuant to EXCLUSION (E) shall be allocated between covered **Defence Costs** and not covered **Defence Costs** based on the relative legal and financial exposures of the parties to the **Claim** and the relative benefits to be obtained by the resolution of the **Claim**.

(E) SUBROGATION

- (1) 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. The **Insured** shall do nothing to prejudice such rights of recovery and shall execute all papers required and do everything necessary to secure such rights and to enable the **Insurer** effectively to bring any recovery action or suit in either the **Insured's** name or in the name of the **Insurer**.
- (2) Any recovery received shall first be applied against any payment made by the **Insurer** with any balance remaining thereafter being remitted to or retained by the **Insured Person** or the **Company**, as applicable.
- (3) The **Insurer** shall not exercise any right of subrogation against an **Insured Person** unless EXCLUSION (A) applies to such **Insured Person**.

6. GENERAL CONDITIONS

(A) LIMIT OF LIABILITY AND RETENTION

- (1) **Limit of Liability** and Sub-Limits:
 - (a) The **Insurer's** maximum aggregate liability under this Policy for all **Loss** shall not exceed the **Limit of Liability**, regardless of the number of **Claims**, or **Insureds** who claim under this Policy.
 - (b) All Sub-Limits stated in ITEM 5 of the SCHEDULE are aggregate for the whole **Policy Period** (and **Discovery Period**, if applicable) regardless of the number of **Claims** and are part of and not in addition to the **Limit of Liability**.
 - (c) **Defence Costs** will be part of and not in addition to the **Limit of Liability**, and payment of **Defence Costs** will reduce the **Limit of Liability**.
- (2) **Retentions**:
 - (a) The **Insurer** will be liable only for the amount of **Loss** which is in excess of the applicable **Retention**. Such retention is to be borne by the **Insureds** and remain uninsured hereunder.
 - (b) No **Retention** will apply to **Loss**, including **Defence Costs**, incurred by **Insured Persons** for which the **Company** is neither permitted nor required to indemnify or for which the **Company** fails to indemnify solely by reason of its financial insolvency. For the purposes of this GENERAL CONDITION (A)(2)(b) the certificate of incorporation, charter, articles of association or other organisational documents of the **Named Company** and each **Subsidiary**, including the byelaws and resolutions thereof, will be deemed to have been adopted or amended to provide indemnification and advancement to the **Insured Persons** to the fullest extent permitted by law.

(B) SETTLEMENT OPPORTUNITY

If the **Insurer** recommends a settlement of any **Claim** within the Policy's applicable **Limit of Liability** which is acceptable to the claimant (a "Settlement Opportunity"), and the **Insured** consents to such a settlement, then the **Insured's** applicable

Retention amount shall be retroactively reduced by 10% for such **Loss**. It shall be a condition precedent to such reduction that the **Insured** shall consent to such Settlement Opportunity within thirty (30) days of the date the **Insured** was first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by a claimant, then within the time permitted by the claimant for the acceptance of such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made. However, if a Settlement Opportunity arises and the **Insured** does not consent to the proposed settlement within the time frame described above, the **Retention** amount shall remain the applicable amount set forth in ITEM 6 of the SCHEDULE even if consent is given by the **Insured** to a subsequent settlement.

(C) CANCELLATION

- (1) The **Insurer** may cancel this Policy for non-payment of premium by sending to the **Named Company** at the address in ITEM 1(b) of the SCHEDULE, written notice stating when cancellation shall be effective, provided always that such cancellation shall take effect not less than thirty (30) days' after the date such written notice is sent. The **Insurer** may not otherwise cancel this Policy.
- (2) The **Named Company** may cancel this Policy by sending to the **Insurer** written notice stating when such cancellation will be effective; provided always that the **Named Company** may not cancel this Policy after the effective date of any **Change in Control** as described in DEFINITION (A). If the **Named Company** cancels this Policy, the **Insurer** will retain the customary short rate premium. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment of unearned premium is not a condition of cancellation.

(D) CHANGE IN CONTROL AUTOMATIC RUN OFF

In the event of a **Change in Control** during the **Policy Period**, this Policy will continue in full force and effect until the end of the **Policy Period** with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such **Change in Control**, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed thereafter and the premium will be considered fully earned in consideration of the coverage extended.

(E) CEASING SUBSIDIARY

If, during the **Policy Period** a **Subsidiary** ceases to be a **Subsidiary** as defined in DEFINITION 2(V), then coverage under this Policy with respect to **Claims** against such **Subsidiary** or any **Insured Person** thereof will continue in full force and effect until the end of the **Policy Period** with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before the date such entity ceased to be a **Subsidiary**, but coverage under this Policy with respect to **Claims** against such **Subsidiary** or any **Insured Person** thereof will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed thereafter.

(F) OTHER INSURANCE AND OTHER INDEMNIFICATION

- (1) Unless otherwise required by law, this Policy shall always apply in excess of any other valid and collectible insurance or indemnification available to the **Insured**.
- (2) Coverage for **Claims** against an Outside Director will be specifically in excess of, and will not contribute with:

- (a) any insurance policy purchased by the **Outside Entity** that provides similar coverage to such Outside Director (if such other insurance is provided by the **Insurer**, then the **Limit of Liability** for **Loss** under this Policy shall be reduced by the amount paid for the benefit of the **Outside Entity** and/or the Outside Director under the other insurance provided by the **Insurer** to the **Outside Entity**); and
- (b) any other indemnification from any other source to such **Outside Director**.

(G) NO ACTION AGAINST THE INSURER

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Policy and until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**. No person or organisation will have any right under this Policy to join the **Insurer** as a party to any action against the **Insureds** to determine the **Insurer's** liability; nor may the **Insurer** be impleaded by the **Insureds** or their legal representatives in any such action.

(H) PAYMENT OF PREMIUM

The **Insurer's** liability under this Policy shall be subject to full payment of the premium stated in ITEM 7 of the SCHEDULE by the **Named Company**.

(I) NOTICES AND AUTHORITY

By acceptance of this Policy, the **Insureds** agree that the **Named Company** shall act on behalf of all **Insureds** with respect to the giving and receiving of any notices under this Policy, the payment of premiums and the receiving of any return premium, the cancellation or renewal of this Policy, authorisation and disclosures in respect of personal data, the declaration of risk and execution of the Policy and the acceptance of any amendments thereto.

(J) INTERPRETATION

- (1) Any reference in this Policy to:
 - (a) the singular shall include the plural and vice versa; and
 - (b) the masculine shall include the feminine and vice versa; and
 - (c) a position or title or legal status of an individual shall include the equivalent position in any other relevant jurisdiction.
- (2) Policy headings and titles are for reference only and shall have no interpretational value.

(K) REPRESENTATIONS AND SEVERABILITY

- (1) The information, particulars and statements contained or referred to in the **Proposal** are material to its acceptance of the risk assumed under this Policy and have been relied upon by the **Insurer**.
- (2) This Policy shall not be avoided on grounds of misrepresentation or non-disclosure except for the deliberate misrepresentation, or deliberate non-disclosure, of the **Insured**, where established by final adjudication or formal written admission by or on behalf of such **Insured**.
- (3) For the purposes of determining the validity of the Policy, or any entitlement to cover under this Policy, in respect of an **Insured**:
 - (a) no knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (b) except for knowledge or information possessed by a **Company's** Chairman of the Board, President, Chief Executive Officer, Chief Financial Officer, Director of Human Resources or General Counsel (or functional equivalent of any of the foregoing), no knowledge or information possessed by any **Insured Person** will be imputed to a **Company**; and
 - (c) the statements made by, information or knowledge possessed by and any conduct of any past, present or future chief executive officer or chief financial officer (or the equivalent executive or management position) of the **Named Company** shall be imputed to all **Companies**;

(L) CHANGES

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or a change in any part of this Policy or stop the **Insurer** from asserting any right under the terms of this Policy. This Policy cannot be waived or changed, except by written endorsement issued to form a part of this Policy.

(M) APPLICABLE LAW AND JURISDICTION

This Policy is to be governed by, and its terms are to be construed in accordance with, the applicable law stated in ITEM 10(a) of the SCHEDULE. Any dispute or difference arising under or in respect of this Policy is to be subject to and determined by the courts within the exclusive jurisdiction stated in ITEM 10(b) of the SCHEDULE.

(N) ENTIRE AGREEMENT

By acceptance of this Policy, the **Named Company** and the **Insurer** agree that this Policy (including the **Proposal** and any materials submitted therewith) and any written endorsements attached hereto constitute the sole and entire agreement between the parties with respect to this insurance. Any prior agreement or understanding between the parties is therefore no longer valid.

(O) TERRITORY

This Policy applies to **Wrongful Acts** actually or allegedly taking place or **Claims** made anywhere in the world.

(P) ASSIGNMENT

This Policy shall not be assigned without the **Insurer's** prior written consent, and any other purported assigned shall be null and void.

(Q) RIGHTS OF THIRD PARTIES

Nothing in this Policy is intended to confer any directly enforceable benefit on any third party other than an **Insured** whether pursuant to the United Kingdom Contracts (Rights of Third Parties) Act 1999 or any other equivalent legislation in any relevant jurisdiction or otherwise.

(R) PERSONAL DATA PROTECTION

The **Insured** is hereby informed that all personal data, including all data provided in this document and all subsequent data provided by the **Insured** related to the fulfillment of the insurance contract, will be included in a data file controlled by HCC International Insurance Company PLC. The data will be processed for the purpose of fulfilling the insurance contract, and to enable HCC International Insurance Company PLC to send the **Insured** information on its products and services. The **Insured** hereby provides its express consent for the data to be transferred to appropriate third parties such as other insurers or reinsurers, insurance and reinsurance brokers, regulatory authorities for co-insurance, reinsurance, portfolio assignment or management or for the adoption of anti-fraud measures purposes. The **Insured** also provides its express consent for the data to be transferred to other companies belonging to the same group as HCC International Insurance Company PLC located in countries outside the European Union, with the exclusive purpose that these may provide data processing services to HCC International Insurance Company PLC. The **Insured** may at any time exercise its right to access, rectify, cancel or object to its data being processed, by notifying HCC International Insurance Company PLC, 1 Aldgate, London, EC3N 1RE, United Kingdom, pursuant to the provisions of the United Kingdom's Data Protection Act 1998.

Should the **Insured** provide HCC International Insurance Company PLC with information related to the **Insured**, any damaged parties or any third person, the **Insured** hereby declares that all the data related to the **Insured**, the damaged parties or any third person given to the **Insurer** have been provided by them, and that the **Insured**, the damaged parties or any third person have provided their consent for their data to be transferred by the **Insured** to the **Insurer** for the fulfilment of the insurance contract in the terms established in this clause.

(S) COMPLAINTS PROCEDURE

HCC is dedicated to providing a high-quality service at all times to the **Insurer's** clients. Should the **Insured** not be satisfied, or for any questions or concerns about the Policy or any **Claim's** handling, please contact us as follows:

The Head of International Compliance,
HCC INTERNATIONAL INSURANCE COMPANY PLC
1 Aldgate, London, EC3N 1RE
United Kingdom

Should we be unable to resolve any difficulty directly with you to your satisfaction, you may be entitled to refer the dispute to the United Kingdom Financial Ombudsman Service who will review your case and who may be contacted at:

The Financial Ombudsman Service
Exchange Tower
London E14 9SR
United Kingdom
Email: complaint.info@financial-ombudsman.org.uk
Telephone: +44(0)300 123 9123

In witness whereof the **Insurer** has caused this Policy to be executed by its authorised officers, but this Policy will not be valid unless countersigned on the SCHEDULE Page by a duly authorised representative of the **Insurer**.