

beazley

Directors' and Officers' and Corporate Legal Liability



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the story of Beazley
and how it all started
with a hatstand

THIS POLICY SETS OUT THE TERMS UPON WHICH THE **INSURER** AGREES TO INSURE THE **INSURED** IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM. THE INSURING CLAUSES AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.

Insuring Clauses

1. Insured persons

The **insurer** will pay on behalf of the **insured persons** any **loss** not indemnified by the **company** resulting from a **claim** first made against the **insured persons** during the **policy period**.

2. Company reimbursement

The **insurer** will reimburse or pay on behalf of the **company** any **loss** which the **company** has paid, or agreed to pay, as indemnification of an **insured person** resulting from a **claim** first made against such **insured person** during the **policy period**.

3. Corporate legal liability

The **insurer** will pay the **company** for any **loss** resulting from any **claim** first made against the **company** during the **policy period**.

Coverage Extensions

1. Regulatory extensions

(a) Dawn raid costs

The **insurer** will pay **dawn raid costs** of the **company**.

(b) Regulatory costs

The **insurer** will pay **regulatory costs** of an **insured person**.

(c) Internal investigation costs

The **insurer** will pay **internal investigation costs** of an **insured person**.

2. Insured persons extensions

The insurer will pay:

- (a) **access to policy costs;**
- (b) **circumstance investigative costs;**
- (c) **data breach costs;**
- (d) **environmental liability costs;**
- (e) **extradition costs;**
- (f) **foreign jurisdiction liberalization loss;**
- (g) **freezing of assets and disqualification costs;**
- (h) **health and safety claim costs;**
- (i) **insolvency hearing costs;**
- (j) **mitigation costs; and**
- (k) **reputation costs;**

of an **insured person**.

Coverage Restrictions

The **insurer** will not be liable to make any payment under this policy for that part of any **loss**:

APPLICABLE TO ALL INSURING CLAUSES AND COVERAGE EXTENSIONS

1. Pollution clean up costs and bodily injury or property damage

which is environmental pollution clean up costs or resulting from any **claim** for actual or alleged bodily injury, sickness, disease or death of any person, or any damage to, destruction, impairment or loss of use of any tangible property.

This Coverage Restriction will not apply to:

- (a) that part of any **claim** against an **insured person** for mental anguish or emotional distress;
- (b) Insuring Clause 1 (Insured persons);
- (c) **health and safety claim costs**, including **defence costs** on account of any **claim** for bodily injury, sickness, disease or death which is a criminal proceeding brought pursuant to Section 217.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, against an **insured person**; or
- (d) **environmental liability costs**.

2. Prior claims, insured events and circumstances

arising out of, based upon or attributable to:

- (a) any **claim, insured event**, circumstance or **wrongful act** of which notice has been given under any policy in relation to which this policy is a renewal or replacement or any matter which taken together with such **claim, insured event**, circumstance or **wrongful act** would constitute a **single event**; or
- (b) any prior or pending litigation, arbitration, administrative or regulatory proceeding which was brought against an **insured** prior to the **continuity date**.

3. Conduct

brought about or contributed to by any:

- (a) deliberately criminal or deliberately dishonest act or omission of any **insured**; or
- (b) profit or advantage gained by any **insured** to which such **insured** is not legally entitled;

as established by a final and non-appealable adjudication in the underlying proceeding, or formal written admission by such **insured**. Formal written admission by the **company** in a deferred prosecution agreement statement of fact does not constitute formal written admission by an **insured person**.

4. Company v insured (U.S.A)

arising out of any **claim** brought by, on behalf of, or at the direction of the **company**, or an **outside entity**, in the United States of America, except and to the extent such **claim**:

- (a) is brought derivatively by a security holder of the **company** or an **outside entity** who, when such **claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of an **insured person** (other than an **insured person** engaged in whistleblowing), the **company** or any **outside entity**, or
- (b) is brought by any trustee, receiver, liquidator, administrator or other insolvency practitioner of the **company** or an **outside entity**, or any assignee of such person.

This Coverage Restriction will not apply to **defence costs**.

5. Offering of securities

arising out of, attributable to, based upon, directly or indirectly:

- (a) any public offering of or registration of any equity securities of the **company** during the **policy period**;
- (b) any actual or proposed consolidation, merger, acquisition or other transaction involving the **company** which results in the securities of the **company** becoming traded on any public stock exchange during the **policy period**.

For the purpose of determining the applicability of these Coverage Restrictions, the knowledge or act, error or omission of any **insured person** will not be imputed to any other **insured person**. The knowledge of each **responsible person** will be imputed to all **companies**.

APPLICABLE TO CORPORATE LEGAL LIABILITY INSURING CLAUSE A.3 ONLY

6. Competition and restraint of trade

arising out of, based upon, or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

7. Professional services

arising out of, based upon or attributable to the performance of or failure to perform professional services.

8. Intellectual property and data protection rights

arising out of, based upon or attributable to any actual or alleged infringement, misappropriation or violation of any intellectual property rights or breach of any data protection legislation.

9. Pension plan

resulting from any **claim** for, or **insured event** arising out of any trust fund, pension scheme, profit sharing scheme or **employee** benefit scheme of any **company** or any **outside entity**.

10. Insured v insured

arising out of any **claim** brought by, on behalf of, or at the direction of the **company**.

11. Employment practices

arising out of, based upon or attributable to any **employment practices wrongful act**.

12. Contractual liability

arising out of, based upon or attributable to any breach of contract or agreement, including any guarantee or warranties, except to the extent that the **company** would have been liable in the absence of such contract or agreement.

13. Sexual misconduct liability

arising out of, based upon or attributable to any actual or alleged: (a) sexual abuse or injury; sexual molestation; sexual assault; sexual exploitation; child abuse or child neglect; or (b) wrongful hiring or retention; wrongful supervision; wrongful investigation; wrongful reporting or failure to report to the proper authorities in connection with or in any way involving any incident or pattern of incidents of alleged sexual abuse or injury, sexual molestation, sexual assault, sexual exploitation, child abuse or child neglect.

14. Cyber

arising out of, based upon or attributable to a **cyber act**, **cyber incident** or **cyber breach**, including any action taken in controlling, preventing, suppressing or remediating any **cyber act**, **cyber incident** or **cyber breach**.

Claim Provisions

1. Notification

(a) *Claims and insured events*

It is a condition precedent to coverage that the **insured** must give notice to the **insurer** of any:

(i) **claim** made against the **insured** during the **policy period**; or

(ii) **insured event** occurring during the **policy period**,

as soon as practicable after the **responsible person** first becomes aware of such **claim**, or **insured event** but in no event later than 60 days after the end of the **policy period**, or within any applicable **discovery period**.

In the event that the **insured** fails to provide notice of any **claim** or **insured event** in accordance with this provision, the **insurer** will not be entitled to deny coverage for that **claim** or **insured event** based upon late notice, unless the **insurer** can establish that their interests were materially prejudiced by reason of such late notice.

However, the **insured** must give notice to the **insurer** of any intention on the part of the **insured** to incur **mitigation costs** prior to such costs being incurred. Any **mitigation costs** incurred without first notifying the **insurer** and obtaining prior consent to such costs being incurred will not be covered under this policy.

In the event that the **insured** is prevented from notifying any **claim** or **insured event** to the **insurer** (after the **insured** has sought consent to do so) due to any legal or regulatory prohibition restricting them from doing so, the **insured** must provide full details of the **claim** or **insured event** to the **insurer** as soon as such restriction is lifted.

(b) Circumstances

The **insured** may, during the **policy period**, notify the **insurer** of any fact or circumstances which in the reasonable opinion of the **responsible person** may give rise to a **claim** or an **insured event**.

Any notice must include the reasons why the **responsible person** reasonably anticipates that the fact or circumstances may give rise to a **claim** or an **insured event** and, where available, full particulars of the dates, acts and persons involved.

Any **claim** which is made or **insured event** which occurs after the end of the **policy period** and which arises from a circumstance notified in accordance with this clause will be deemed to have been made or have occurred at the same time such circumstance was notified.

(c) Related matters

A **single event** will be treated by the **insurer** as having been notified when the first of such **claims** or **insured events** was notified or is deemed to have been notified to the **insurer**, irrespective of whether or not the **insurer** has formally accepted the notice.

(d) Address for notifications

All notices must be sent either by e-mail to claims.canada@beazley.com or by mail to the address below:

Beazley Canada Limited
First Canadian Place
4530 – 100 King Street W, P.O. Box 328
Toronto, ON M5X 1E1 Canada

2. *Defence and settlement*

(a) Duties

The **insured** has the right and duty to defend and contest any **claim** made against them, or any **insured event** commenced against them, and will take all reasonable steps to prevent or minimize any **loss**.

The **insurer** will be entitled to participate fully in the conduct of the defence, including settlement negotiations, contribution or indemnification proceedings, where it is reasonably likely to involve the **insurer** making any payment under this policy.

(b) Consent to policy costs

The **insurer** will not be obliged to pay any **policy costs** provided under this policy unless the **insurer** has provided prior written consent to such **policy costs** being incurred (except where expressly stated in the policy that prior consent is not first required).

If the **insurer's** prior written consent cannot reasonably be obtained before **policy costs** (not including **mitigation costs**) are incurred, then the **insurer** will give retrospective approval for such reasonable **policy costs** necessarily incurred.

(c) Advancements

The **insurer** will pay **defence costs** as soon as possible but in any event no later than 60 days after the receipt of such request, prior to coverage being confirmed.

(d) Consent to settlements

If an **insured** admits liability or compromises or settles any **claim** or **insured event** without the **insurer's** prior written consent, this policy will not provide cover to that **insured** in connection with that admission, **claim** or **insured event**.

The **insured** will not be required to receive the **insurer's** consent prior to making any self report or formal written representation to a **regulatory authority**, provided that, as soon as legally permitted, the **insured** will seek the consent of the **insurer** in accordance with this clause. The **insurer** will not consider such self report or formal written representation as an admission of liability for the purposes of this clause.

(e) Uninsured loss

The **insured** will reimburse the **insurer** for any payments which are ultimately determined not to be covered under this policy.

3. Allocation

Where a **claim** or **insured event** involves both parties covered and not covered and/or matters covered and not covered by this policy, a fair and proper allocation shall be made between the **insured** and the **insurer**, taking into account the relative legal and financial exposures attributable to the covered matters or persons and the matters or persons not covered by this policy.

4. Cooperation

The **insured** will give all information and assistance to the **insurer** as it may reasonably require to enable it to investigate any matter notified under this policy and cooperate with the **insurer** in responding to any **claim** or **insured event**.

Except where expressly provided for in this policy, these steps will not be paid for by the **insurer**. The failure of any **insured person** to give the **insurer** the information and assistance which it may reasonably require will not impair the rights of any other **insured person** under this policy.

5. Other insurance or indemnification

This policy will only pay **loss** that is in excess of any amount recoverable from a more specific directors' and officers'/management liability, pension trustee/fiduciary liability, general liability or employer's liability insurance available to the **insured**. As excess

insurance, this policy will not apply or contribute to the payment of any **loss** until the amounts of that other insurance have been exhausted.

All coverage under this policy for **loss** arising from an **insured person** whilst acting in their capacity as an **outside director**, will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **insured person** from the **outside entity** or its insurers by reason of their service as such.

6. Financial interest coverage

This policy will cover the **policyholder** for loss caused to its financial interest in an **uncovered company** but will not provide cover for the loss of an **uncovered company**.

The **insurer** will pay the **policyholder** for loss to its financial interest in such **uncovered company** that is valued as the amount of **loss** which would have been payable to the **uncovered company** under this policy had the **uncovered company** been permissibly insured under this policy. No payment will be made in respect of any Insuring Clause or Coverage Extension which would have covered the **loss** of any **insured person** in respect of their role for the **uncovered company**.

The **policyholder** will, as a condition of this policy:

- (a) procure that the **uncovered company** adheres to all duties, obligations and conditions under this policy that would have been applicable had the **uncovered company** been insured under this policy;
- (b) notify the **insurer** of any cause of action, benefit or recovery that an **uncovered company** may have in relation to the facts and circumstances of the loss;
- (c) ensure that the **uncovered company** enforces and/or assigns any cause of action, benefit or recovery to the **policyholder** and where there is a benefit or recovery, the amount payable under this policy shall be reduced by the same amount.

7. Subrogation and recoveries

Following a payment under this policy, the **insurer** will be subrogated to all rights and remedies available to the **insured** in connection with that payment therefore the **insurer** has the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in the name of the **insured**. Whether before or after payment under this policy, the **insured** will take all steps necessary, or required by the **insurer**, to preserve the rights and remedies which the **insured** may have to recover its **loss**.

The **insured** will provide to the **insurer** any assistance the **insurer** may require to secure the rights and remedies set out above. The **insurer** shall be entitled to take control of all steps taken to recover any loss.

Any amounts recovered will be applied in the following order:

- (a) to reimburse costs incurred in bringing proceedings against the third party;
- (b) then to the **insured** for the amount of any **loss** which exceeds the **limit of liability**;
- (c) then to the **insurer** up to the amount of the **loss** paid by the **insurer** and the **limit of liability** will be reinstated for such amounts; and
- (d) then to the **insured** to reimburse the **retention**.

The **insurer** agrees not to exercise its rights of recovery against any **insured person** unless the payments made by the **insurer** under this policy are brought about or contributed to by the deliberately criminal or deliberately dishonest act or omission of that **insured person**.

8. Priority of payments

If **loss** is payable under more than one Insuring Clause or Coverage Extension, then the **insurer** will pay such **loss** as follows:

- (a) first, the **insurer** will pay the **loss** of the **insured person** where the **company** has not indemnified the **insured person** for such **loss**;
- (b) second, the **insurer** will pay the **loss** of the **insured person** where the **company** has indemnified the **insured person** for such **loss**; and
- (c) third, the **insurer** will make such other payments which the **insurer** may be liable to make to the **company**.

General Conditions

1. Limit of liability

The **limit of liability** is the maximum amount payable by the **insurer** under this policy in respect of all **insureds**, Insuring Clauses and Coverage Extensions.

However, if indicated as 'included' in the Declarations, the **limit of liability** will be automatically reinstated in the event of erosion or exhaustion by payment of **loss** to the extent of such erosion or exhaustion. Such reinstated **limit of liability** will only apply to the coverage afforded under Insuring Clause 1 and only after the limit of liability of all insurance policies sitting excess of this policy have been exhausted.

The **insurer** will not be liable for more than the **limit of liability** in respect of all **loss** arising from a **single event** and twice the **limit of liability** in respect of all **loss** payable under this policy (in the event of a reinstatement).

Any **loss** paid by the **insurer** under this policy will reduce the **limit of liability**.

Where any sub-limit is specified in the policy or Declarations, the **insurer** will have no liability in excess of that sub-limit.

Any sub-limit will be part of and not in addition to the **limit of liability**.

2. Retention

The **retention** will apply to:

- (a) all **loss** to which indemnification of an **insured person** by the **company** or an **outside entity** is legally required or permitted, whether or not actual indemnification is made, unless such indemnification is not made by the **company** or such **outside entity** solely by reason of its financial insolvency, in which case no retention will apply; and
- (b) all other **loss** incurred by the **company**.

The **insurer** will be liable only for that part of any covered **loss** which exceeds the **retention**.

With respect to the **company's** and any **outside entity's** indemnification of **insured persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **policyholder**, each **subsidiary** and each **outside entity**,

will be deemed to permit indemnification of the **insured persons** to the fullest extent allowable by law.

In the event a **company** or an **outside entity** refuses in writing to indemnify the **insured persons** for **policy costs** or fails to indemnify the **insured persons** for **policy costs** within 60 days of a request for indemnification, then the **insurer** will advance such **policy costs**, provided that the **insurer** will be entitled to seek recovery from the **company** for such **policy costs** up to the amount of the **retention**. The **insurer** will be entitled to offset such **policy costs** against any sums due from the **insurer** to the **company**.

Only one **retention**, being the largest, will be applied to the total amount of **loss** arising from a **single event**.

In respect of **mitigation costs**, a single **retention** will apply to all anticipated **claims** arising out of, based upon or attributable to the same originating cause, source or event.

3. *Change of control / acquisitions*

In the event of a **change of control** of a **company**, no cover under this policy will apply for any:

- (a) **claim** against that **company** or their **insured persons**, which arises from a **wrongful act**; or
- (b) **insured event** concerning that **company** or their **insured persons**, which arises out of any conduct, circumstance or matter;

that occurred after such **change of control**.

The **policyholder** will, as soon as practicable, give the **insurer** written notice of any **change of control** which takes place in respect of the **policyholder**.

Upon receipt by the **insurer** of such written notice, the **insurer** may agree at their sole discretion, upon receipt of sufficient information to allow the **insurer** to assess the potential increase in insurance risk, to the continuation of cover for any:

- (i) **claim** against that **company** or their **insured persons**, which arises from a **wrongful act**; or
- (ii) **insured event** concerning that **company** or their **insured persons**, which arises out of any conduct, circumstance or matter;

that occurred after such **change of control**, subject to the **policyholder** accepting any amendment to the terms and conditions of this policy or the charging of a reasonable additional premium that the **insurer** requires.

In the event of an acquisition of a **subsidiary**, no cover under this policy will apply for any:

- (1) **claim** against that **subsidiary** or their **insured persons**, which arises from a **wrongful act**; or
- (2) **insured event** concerning that **subsidiary** or their **insured persons**, which arises out of any conduct, circumstance or matter;

that first commenced before such acquisition.

4. Discovery period

If this policy is not renewed or replaced, the **insured** will be entitled:

- (a) to an automatic **discovery period** of 60 days;
- (b) to purchase an optional **discovery period** for a longer period as specified in the Declarations, provided that written notice is given to the **insurer** by the **policyholder** within 30 days after the end of the **policy period** and any additional premium specified by the **insurer** is paid within 45 days of the end of the **policy period**; and
- (c) to an unlimited **discovery period** in the event such **insured** is a **retired insured person**.

The automatic **discovery period** is part of and not in addition to any optional **discovery period** purchased by the **insured**.

The **discovery period** is non-cancellable and the premium for the optional **discovery period** is deemed fully earned at the inception date of the optional **discovery period**.

In the event of a **change of control** of the **policyholder**, the **policyholder** is entitled to purchase a 72 month **discovery period** on such terms and conditions and for such additional premium as the **insurer** requires.

Any **discovery period** does not increase the **limit of liability**, and any payments made with respect to **claims** and **insured events** during the **discovery period** is part of the **limit of liability**.

5. Cancellation

The **policyholder** may cancel this policy by giving the **insurer** prior written notice stating when the cancellation will be effective. In such event, the **insurer** will give the **policyholder** a pro rata refund of the premium for the remaining portion of the **policy period**. However, in the event that the **insured** has reported any **claim**, **insured event**, fact or circumstance under this policy, the premium will be deemed fully earned with no refund payable unless the **policyholder** withdraws, at the time of such notice of cancellation, all such **claims**, **insured events**, facts and circumstances from this policy.

The **insurer** will have the right to cancel this policy only for non-payment of premium by providing in writing 30 days' notice of cancellation to the **policyholder**. If the premium is paid in full to the **insurer** before the 30 day notice period expires, notice of cancellation will automatically be revoked. In the event of cancellation, the **insurer** will be entitled to the pro-rata portion of the premium. If this cancellation notice provision is in conflict with any governing law or regulation, then such provision will be amended to afford the minimum requirements permitted under such law or regulation.

6. Authorization and notices

The **policyholder** will act on behalf of all **insureds** in connection with all matters relevant to this policy unless the **policyholder** is insolvent in which event the remaining entities will agree with the **insurer** as to which one of them will act on behalf of all **insureds**.

Subject to the other provisions of this policy, this clause does not preclude an **insured person** from notifying the **insurer** of a **claim**, **insured event** or circumstance in accordance with the notification provision in this policy.

7. Third parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **insured**.

8. Assignment

Neither this policy nor any right under it may be assigned without the prior written consent of the **insurer**.

9. Policy interpretation

This policy, its Declarations and any endorsements are one contract in which, unless the context otherwise requires:

- (a) headings and subheadings are descriptive only, solely for convenience, not an aid to interpretation and form no part of the terms and conditions of coverage;
- (b) the singular includes the plural, and the masculine includes the feminine, and vice versa;
- (c) "Including" and "include(s)" means without limitation;
- (d) references to specific legislation federal, provincial, state or local law, rule or regulation include amendments to and re-enactments of that legislation and any similar or equivalent legislation in the relevant jurisdiction;
- (e) references to positions, offices or titles will include their equivalents in any jurisdiction;
- (f) if any provision of this policy is or becomes void or illegal, is invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction, such provision will be deleted. The **insurer** and the **insured** will use their best efforts to agree a replacement for the provision which achieves as far as possible the same effect as would have been achieved by the deleted provision.

10. Governing law

This policy will be governed by and construed in accordance with the laws of the province where the **policyholder** is registered and the applicable laws of Canada. Any dispute will be submitted to the exclusive jurisdiction of the Courts of the province where the **policyholder** is registered.

11. Service of Suit

In any action to enforce the obligations of the **insurer**, service of proceedings may validly be made upon the Attorney In Fact in Canada, whose address for such service is 200 Bay Street, Suite 2930, P.O. Box 51, Toronto, ON M5J 2J2.

12. Duty of disclosure

The **insurer** expects the **insured** to comply with their duty of disclosure. In the event that there has been a breach of the duty of disclosure, the **insurer** will not exercise any available remedies for any breach that was free of any fraudulent conduct or intent to deceive.

The knowledge or act, error or omission of any **insured person** will not be imputed to any other **insured person**. The knowledge of each **responsible person** will be imputed to all **companies**.

13. Insurer's consent

Where the **insured** is required under this policy to seek the consent of the **insurer**, the **insurer** will not unreasonably withhold, delay or deny such consent.

14. Sanction limitation

The **insurer** will not be liable to provide any cover, benefit or pay any claim under this policy to the extent that the provision of such cover, benefit or payment of such claim would expose the **insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Canada, the European Union, United Kingdom or United States of America.

Definitions

The following definitions are applicable to all sections of this policy:

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access to policy costs means reasonable fees, costs and expenses necessarily incurred by any of the **insured persons** to investigate and resist any challenge, by any other **insured person**, the **company** or any third party, to their right to cover under this policy.

bail bond costs means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a court.

change of control means any one of the following events:

- (a) the **policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- (b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **policyholder**;
- (c) an entity ceases to be a **subsidiary**, or becomes controlled by another entity by virtue of any law; or
- (d) a change of "control" occurred as specified in subsection 2(3) of the Canada Business Corporations Act, R.S.C. 1985, c. C-44.

change of control will not be considered to have occurred in the event of **financial impairment**.

circumstance investigative costs means reasonable fees, costs and expenses necessarily incurred by any of the **insured persons** to investigate any fact or circumstance notified to the **insurer** during the **policy period** and to plan the defence of any subsequent potential **claim**, but only when and to the extent it is established that after a **claim** is made such amounts avoid **defence costs** being incurred specifically in response to such **claim** and is covered by this policy. An **insured** may approach the **insurer** prior to a **claim** being made for consent that such fees, costs and expenses will be considered reasonable in the event a **claim** is subsequently made.

claim means:

- (a) a written demand for damages, compensation or non-monetary relief;
- (b) a civil proceeding for damages, compensation or non-monetary relief;
- (c) a demand for mediation, arbitration or other form of alternative dispute resolution for damages, compensation or non-monetary relief; or
- (d) a criminal proceeding;
- (e) in respect of an **insured person** only, an administrative or regulatory proceeding,

arising out of a **wrongful act**.

claim includes:

- (i) in respect of a **company** only, an administrative or regulatory proceeding brought against the **company** arising out of a **company wrongful act** provided that such proceeding is continually maintained against an **insured person**;
- (ii) a written request to toll or extend the operation of or waive any statute of limitations or contractual time-bar which may be applicable to a **claim** as defined above.

company means the **policyholder** and any **subsidiary**.

company wrongful act means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **company**.

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

continuity date means the date specified in the Declarations.

cyber act means any actual or alleged unauthorized, malicious or criminal act or series of related unauthorized, malicious or criminal acts, or the threat or hoax thereof, regardless of time and place, involving access to, processing of, disclosure of, use of, suspension of or operation of any **computer system** or **data**.

cyber incident means:

- (a) any actual or alleged error, omission or accident, or series of related errors, omissions or accidents, involving any **computer system**;
- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**; or
- (c) any actual or alleged violation of any **privacy law** in relation to **data**.

data means any information, facts, concepts or code that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.

cyber breach means the actual or alleged theft, loss or unauthorized disclosure of **data** that is in the care, custody or control of the **insured** or a third party for whose theft, loss or unauthorized disclosure of **data** the **insured** is liable.

data breach costs means reasonable fees, costs and expenses necessarily incurred by an **insured person** directly in connection with preparing for, cooperating with or attending interviews, or **defence costs** in responding to a **data breach event**.

data breach event means:

- (a) a **claim** first made against an **insured person** during the **policy period**;
- (b) an **internal investigation**; or
- (c) a **regulatory event** first commenced during the **policy period**,

arising out of any actual or alleged breach of any **privacy law**.

dawn raid means:

- (a) a raid or on-site visit to the **company** by any **regulatory authority** that involves the production, review, copying or confiscation of files or interviews of any **insured persons**;
- (b) a public announcement relating to an event in sub-paragraph (a) above.

A **dawn raid** does not include routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **insured**.

dawn raid costs means reasonable fees, costs and expenses necessarily incurred by the **company** directly in connection with preparing for, cooperating with or attending interviews in respect of or responding to a **dawn raid** first commenced during the **policy period**.

defence costs means the reasonable fees, costs, expenses, **expert costs** and **bail bond costs** necessarily incurred by or on behalf of the **insured** in connection with the investigation, defence, settlement or appeal of a **claim**.

deportation or freezing order means an interim or interlocutory order first issued during the **policy period**:

- (a) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **insured person**;
- (b) imposing a charge over real property or personal assets of an **insured person**;
- (c) imposing a restriction of an **insured person's** liberty; or
- (d) for the deportation of an **insured person** following revocation of an otherwise proper, current and valid immigration status for any reason other than the **insured person's** finally adjudicated conviction for a crime.

discovery period means the period of time following the end of the **policy period** during which notice may be given to the **insurer** of:

- (a) any **claim** arising out of any **wrongful act** committed before the end of the **policy period**; or
- (b) any **insured event** arising out of any conduct undertaken before the end of the **policy period**.

disqualification order means an order first issued during the **policy period** disqualifying an **insured person** from holding office as a company director or officer.

employee means any natural person who was or is:

- (a) under a contract of employment with;
- (b) working under an apprenticeship with;
- (c) hired or seconded to; or
- (d) working under the control and supervision of,

the **company**.

employment practices wrongful act means any employment related actual or alleged tortious act or omission, breach of statutory provision or breach of civil or common law relating to an **employee**.

environmental liability costs means **defence costs** incurred by any **insured person** in connection with an **environmental claim**.

environmental claim means a **claim** first made against an **insured person** during the **policy period** and which arises out of a discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, nuclear material, or waste of any kind, including any actual or alleged direction, or request to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralise pollutants, contaminants, nuclear material or waste of any kind.

expert costs means the reasonable fees, costs and expenses of an expert retained through defence counsel in order to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence.

extradition costs means the reasonable fees, costs and expenses necessarily incurred by an **insured person** in connection with an **extradition proceeding**.

extradition proceeding means any proceeding against an **insured person** first commenced during the **policy period** to remove that **insured person** to another territory against their will, and includes any appeal to such proceeding.

financial impairment means the appointment by any provincial, territorial, state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **company**.

foreign jurisdiction means any jurisdiction other than the country in which the **policyholder** is domiciled.

foreign jurisdiction liberalization loss means, with regard to any **claim** or **insured event** brought and maintained in a **foreign jurisdiction** during the **policy period** against the **insured persons** of a **company** formed and operating in such **foreign jurisdiction**, any **loss** which would be payable under the insuring clause, definitions, exclusions and extensions of the **foreign policy** which are more favourable to such **insured person** than the terms and conditions of this policy, with the exception of any Coverage Restrictions specific to the **insured** included in this policy.

foreign policy means the standard policy (including all endorsements that are mandatory according to the law of such jurisdiction) provided by the lead **insurer** in a **foreign jurisdiction** that affords coverage which is substantially similar to the cover afforded under this policy.

freezing of assets and disqualification costs means reasonable legal or professional fees, costs and expenses necessarily incurred by an **insured person** to bring legal proceedings to obtain the discharge or revocation of a **disqualification order** or **deportation or freezing order**.

health and safety claim means any **claim** first made against an **insured person** during the **policy period** alleging a breach of health and safety legislation or any legislation relating to involuntary manslaughter or corporate manslaughter.

health and safety claim costs means the **defence costs** of an **insured person** incurred in respect of a **health and safety claim**.

insolvency hearing costs means reasonable fees, costs and expenses necessarily incurred by an **insured person** to retain legal advisors for the purposes of representation at any **insolvency hearing**.

insolvency hearing means any formal or official hearing first commenced during the **policy period** by an insolvency official in connection with an investigation or inquiry into the affairs of a **company** or an **insured person**.

insured means the **insured persons** and the **company**.

insured event means: a **data breach event**; a **dawn raid**; a **deportation or freezing order**; a **disqualification order**; an **environmental claim**; an **extradition proceeding**; an **insolvency hearing**; an **internal investigation**; a **regulatory event**; and a **reputational damage event**.

insured person means any natural person who was, is, or during the **policy period** becomes:

- (a) a director or officer of the **company**;
- (b) a Data Protection Officer;
- (c) an **outside director**;
- (d) an **employee** of the **company**:
 - (i) whilst acting in a managerial or supervisory capacity;
 - (ii) whilst performing an advisory role on any remuneration or audit committee of the **company**;
 - (iii) when named as a co-defendant in a **claim** or **insured event** which also names a director or officer of the **company**;
 - (iv) with respect to a **claim** alleging an **employment practices wrongful act**; or
 - (v) admitted to practice law and employed to provide legal advice to the **company** and only when named as a co-defendant in a **claim** or **insured event** which also names a director or officer of the **company**;
- (e) a de facto or shadow director while acting in a capacity as a director or officer of the **company** ;

- (f) a prospective director named as such in any listing particulars or prospectus issued by the **company**; or
- (g) a duly named representative of a legal entity which is a corporate director of the **company**;

but only when and to the extent acting for and on behalf of the **company** in such capacity.

insured person includes the estate, heirs, legal representatives or assigns of an **insured person** in the event of their death, incapacity or bankruptcy or the lawful spouse, civil or domestic partner of an **insured person** solely in their capacity as such.

insured person does not include any externally appointed trustee, receiver, liquidator, administrator or other insolvency practitioner.

insurer means Beazley Syndicate 3623 at Lloyd's.

internal investigation means a request by or on behalf of the **company** during the **policy period** for an **insured person** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with an investigation by the **company** following a notification to a **regulatory authority** by a **company** or an **insured person** or whistleblower informing a **regulatory authority** of an actual or suspected material breach of an **insured person's** fiduciary or regulatory duties. An **internal investigation** does not include routine regulatory or internal supervision, inspection, review, examination or audit, or any request for mandatory information in respect of a regulated entity conducted in a **company's** or **regulatory authority's** normal review or compliance process.

internal investigation costs means reasonable fees, costs and expenses necessarily incurred by an **insured person** for legal representation in connection with an **internal investigation**.

limit of liability means the amount specified in the Declarations.

loss means:

- (a) **policy costs** to the extent afforded by the applicable Coverage Extension; and
- (b) any amount that the **insured** is legally liable to pay as damages, judgments, settlements, pre and post judgment interest, punitive or exemplary damages, and the multiplied portion of any damage award where insurable by law.

loss does not include:

- (i) fines and penalties, except:
 - (1) civil or regulatory fines and penalties awarded against an **insured person** up to the sub-limit specified in the Declarations; or
 - (2) punitive or exemplary damages;
- (ii) employment-related compensation, wages or benefits, or costs or overheads of the **company**;
- (iii) taxes, except **personally liable corporate tax amounts**; or
- (iv) amounts which are uninsurable.

If the applicable law of the jurisdiction in which fines or penalties or damages were awarded permits more favourable insurability of such fines, penalties or damages than the governing law of this policy, then the insurability of such fines, penalties or damages will be determined in accordance with that relevant jurisdiction and, to this extent, will not be considered to be uninsurable loss under this policy.

management control means:

- (a) controls the composition of the board of directors;
- (b) controls more than half of the shareholder voting power; or

(c) holds more than half of the issued share capital.

mitigation costs means any reasonable payments incurred by the **insured person** during the **policy period** in taking action to mitigate the financial consequences of a **wrongful act** which the **insured** establishes to the **insurer's** satisfaction would otherwise have reasonably been expected to give rise to a **claim** for which the resulting **loss** would have been covered by the policy. **Mitigation costs** do not include payments incurred after such **claim** is made.

mitigation costs does not include payments incurred without the **insured** first obtaining the **insurer's** consent.

outside director means any natural person who, at the specific request of the **company**, is serving as a director, officer, shadow director, trustee (other than a pension trustee), regent or governor of an **outside entity**.

outside entity means any entity other than:

- (a) a **company**; or
- (b) an entity with securities issued or traded within the United States of America.

In the event that the **company** requests that a natural person serve as a director, officer, shadow director, trustee, regent or governor of such an entity in (b) above, then this definition will be extended for a period of 60 days from the commencement of such position to include the entity, during which time the **policyholder** will give the **insurer** sufficient information to allow the **insurer** to assess the potential increase in insurance risk. Upon receipt of that information, the **insurer** may agree to extend this definition to include such entity, subject to the **insured** accepting any amendment to the terms and conditions of this policy or the charging of a reasonable additional premium that the **insurer** requires.

policyholder means the entity named in the Declarations.

personally liable corporate tax amounts means those amounts of unpaid corporate taxes that an **insured person** is found to be personally liable to pay following **financial impairment**.

policy costs means **access to policy costs, circumstance investigative costs, data breach costs, dawn raid costs, defence costs, environmental liability costs, extradition costs, foreign jurisdiction liberalization loss, freezing of assets and disqualification costs, health and safety claim costs, insolvency hearing costs, internal investigation costs, mitigation costs, regulatory costs, and reputation costs.**

policy costs will not include the remuneration of any **insured person**, the cost of their time or costs or overheads of the **company**.

policy period means the period specified in the Declarations.

privacy law means any law or regulation concerning the collection, use, safeguarding, handling, storage, retention or destruction of information, including but not limited to data protection legislation and the Personal Information Protection and Electronic Documents Act, SC 2000, c 5 PIPeA.

regulatory authority means any provincial, federal or foreign regulator, government, government body, judicial or parliamentary body, governmental or administrative agency, any self-regulatory body recognised in that capacity under applicable law or official trade body.

regulatory costs means reasonable fees, costs and expenses necessarily incurred by an **insured** directly in connection with preparing for, cooperating with or attending interviews in respect of or responding to a **regulatory event** first commenced during the **policy period**.

regulatory event means:

- (a) a request by a **regulatory authority** for an **insured person** to attend an interview, meeting or provide information;
- (b) a **dawn raid**; or
- (c) any formal or official hearing, examination or investigation by a **regulatory authority**, once the **insured person**:
 - (i) is requested or required to cooperate with or attend; or
 - (ii) is identified in writing by that **regulatory authority** as a target of;

the formal or official hearing, examination or investigation. Where the **regulatory authority** is the Securities Exchange Commission (SEC) (U.S.A.), this will only apply where the **insured person** has been served with a subpoena or Wells Notice.

A **regulatory event** does not include routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **insured**.

reputation costs means the reasonable fees, costs and expenses necessarily incurred by the **insured person**:

- (a) in appointing a public relations firm or consultant, a crisis management firm, a law firm or tax advisor retained by the **insured person** directly to mitigate the adverse or potentially adverse effect on that **insured person's** reputation due to a **reputational damage event**;
- (b) in appointing a law firm to effect an **insured person's** right to be forgotten or right to erasure following a **reputational damage event**.

reputational damage event means:

- (a) a **claim** first made against an **insured person** during the **policy period**;
- (b) negative publicity posted on internet-based social media platforms or websites of which the **insured person** first becomes aware during the **policy period** and which could, in their reasonable opinion, give rise to a **claim**.

responsible person means the Risk Manager, Insurance Manager, Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Compliance Officer, Head of Audit or General Counsel of the **policyholder**.

retention means the applicable amount specified in the Declarations or as otherwise specified in the Policy.

retired insured person means any **insured person** who has ceased to act in their insured capacity prior to expiry of the **policy period** for reasons other than:

- (a) disqualification from holding office or from managing a company;
- (b) a **change of control**; or
- (c) the insolvency of any **company**;

and does not subsequently resume their position.

single event means all **claims** and **insured events** arising out of, based upon or attributable to the same originating cause, source or event.

subsidiary means any entity in which the **policyholder** either directly or indirectly through one or more entities has or had **management control** on or before the inception date of this policy.

subsidiary will include:

- (a) any new entity which the **company** incorporates during the **policy period** and which, at the time of incorporation, the **company** has **management control**; and
- (b) any entity that the **company** acquires **management control** of during the **policy period** provided that at the time of obtaining that **management control**, the acquired entity is not incorporated, domiciled or has equity securities issued or traded, in the United States of America .

If a newly acquired entity is incorporated, domiciled or has publicly traded securities issued or traded in the United States of America, the **insurer** will provide cover under this policy for 60 days from the date of acquisition, during which time the **policyholder** will give the **insurer** sufficient information to allow the **insurer** to assess the potential increase in insurance risk. The **insurer** may agree to extend the definition of **subsidiary** to include the newly acquired entity, subject to the **policyholder** accepting any amendment to the terms and conditions of this policy or the charging of a reasonable additional premium that the **insurer** requires.

subsidiary does not include any fund, investment vehicle, managed investment scheme or trust.

uncovered company means any **company**:

- (a) that would, subject to the terms and conditions of this policy, have been insured under this policy were it not located in a jurisdiction where it is impermissible under any applicable law, licence or authorisation for the **insurer** to provide insurance to that **company**; or
- (b) which the **policyholder** has elected that the policy will not cover directly but, instead, the policy will cover the **policyholder's** own financial interest in such **company**.

wrongful act means any act, error, omission, misstatement, misleading statement, neglect, **employment practices wrongful act** or breach of duty actually or allegedly committed, attempted or proposed to be committed by any **insured person**. In respect of Insuring Clause 3, **wrongful act** will only mean a **company wrongful act**.