



**GENERAL CONDITIONS  
DIRECTORS AND OFFICERS  
LIABILITY INSURANCE  
BusinessGuard Private D&O ENG 2016**



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### **Important Notices**

In consideration of payment of the premium, the *insurer* declares to offer coverage based on the following conditions.

This is a claims made insurance policy. Cover under this policy is afforded solely with respect to *claims* first made against an *insured* during the *policy period*.

The *insurer* has no obligation to perform the respective defense by himself, but may take his own initiatives in certain circumstances in that respect. The amounts to be paid for that defense are part of the *limit of liability*.

The headings and the titles of paragraphs in this policy are for convenience only and do not carry any meaning to this contract. Words in italic typeface have special meaning and are defined under "Definitions" or in the Schedule. Words not specifically defined herein have the meaning normally attributed to them.

Please read this policy carefully and review its cover with your broker or insurance agent.



This insurance complies with the requirement of no certainty as envisaged in Section 7:925 of the Dutch Civil Code, if and to the extent that the loss for which compensation is claimed is the result of an event of which it was not certain to the parties at the time when the insurance was taken out that any damage to third parties had arisen or would arise still from such event according to the normal course of the circumstances.

## **ARTICLE 1 - Coverage**

### **1.1 Coverage Managerial Liability**

The *insurer* will pay the *loss* incurred by the *insured*, except as far as the *company* has indemnified the *insured*.

### **1.2 Coverage indirect Liability**

The *insurer* will pay the *loss* incurred by the *insured* in respect of any *wrongful act* not committed by the *insured* himself, but for which the *insured* is liable.

### **1.3 Coverage company reimbursement**

The *insurer* will pay any *loss* of the *company* for which the *company* has indemnified *insured*. Payment by the *insurer* will only occur when and to the extent that the *company* is legally permitted or obliged to indemnify the *insured* and payment to the *insured* has actually occurred.

### **1.4 Coverage investigation- and pre-investigation costs**

The *insurer* will pay the *investigation costs* resulting from an *investigation* and the *pre-investigation costs*.

### **1.5 Coverage public relations costs**

The *insurer* will pay the *public relations costs* of an *insured*.

### **1.6 Coverage emergency costs**

If, due to an emergency, the *insurer's* written consent cannot reasonably be obtained before *defence costs* are incurred, the *insurer* will give retrospective approval and the *insurer* will pay such *defence costs* up to, in the aggregate, 10 per cent of the *limit of liability*.

### **1.7 Bail Bond and Bond Expenses**

The *insurer* will pay bail bond and civil bond expenses of each *insured* directly in connection with a *claim*.

### **1.8 Coverage heirs/ spouses / registered partners**

The *insurer* will pay the *loss* resulting from a *claim* made against:

- (a) heirs
- (b) legal representatives
- (c) lawful spouse; or
- (d) registered partner

of the *insured* resulting from a *wrongful act* of the *insured*.

### **1.9 Special excess coverage for non-executive directors**

The *insurer* will pay a separate special excess limit (as stipulated on the Schedule), for any *loss* incurred by any *officer*, *supervisory board member* *director* and the non executive director provided that:

- (a) the *limit of liability* as stipulated on the Schedule and (possible) excess cover or other directors and officers insurances are exhausted and;
- (b) the *director*, *officer* and non executive director cannot derive right from any other insurance coverage, loss payment or indemnification.



**1.10 Extradition Defence Costs**

The *insurer* will pay the reasonable fees, costs and expenses of each *insured* (including remuneration) incurred with the *insurer's* prior written consent, in connection with any *extradition proceeding* brought against such *insured* directly related to a *claim*.

In respect of all coverages the following will apply. Coverage under this policy is afforded solely with respect to *claims* first made against an *insured* during the *policy period* or if applicable, during the *discovery period*.

**ARTICLE 2 – Definitions**

**2.1 Bail bond and civil bond expenses**

reasonable costs of any bond or other similar financial instrument to guarantee an *insured's* contingent obligation, up to 12 months, as required by a court hearing in connection with a *claim* due to any *wrongful act*.

**2.2 Claim**

- (i) any written demand for compensation, other than any demand for compensation made by the *company* or made by an *outside entity*; or
  - (ii) any civil proceeding, or
  - (iii) any arbitral proceeding, or
  - (iv) any criminal proceeding, or
  - (v) any administrative proceeding, or
  - (vi) any *investigation*; or
  - (vii) any *pre-investigation*; or
  - (viii) any judicial order as stated in article 3.6; or
  - (ix) any investigation initiated by the Enterprise Chamber as stated in article 3.9;
- brought against any *insured* for any *wrongful act*.

*Claims* arising out of, based upon or attributable to a *single wrongful act* shall be considered to be a single *claim*.

**2.3 Company**

the *policyholder* designated in the Schedule and any of its *subsidiaries*.

**2.4 Continuity Date**

the date from the moment that the *policyholder* has maintained uninterrupted directors and officers coverage.

**2.5 Corporate Founder**

any natural person other than an outside counsel or other person who incorporates companies in the ordinary course of business, and who:

- (a) acted or acts on behalf of the *policyholder* for the purpose of incorporating the *policyholder*, and who is a *director*, *officer*, *supervisory board member* or *employee*; or
- (b) in the case of defective incorporation, would have been appointed as a *director*, *officer*, *supervisory board member* or *employee* of a *subsidiary* by the *policyholder*.

**2.6 Defence Costs**

reasonable and necessary fees, costs and expenses incurred with the prior consent of the *insurer*, in connection with any *claim* made against any *insured*. *Defence costs* will not include *pre-investigation costs*.

**2.7 Director, Officer or Supervisory Board Member**

- (i) any natural person duly appointed or elected as a director, an officer or a supervisory board member of the *company* pursuant to any applicable law, or
- (ii) any natural person duly appointed or elected as an executive director or an executive officer of the *company* pursuant to any applicable law;



- (iii) any natural person duly appointed or elected as a non-executive director or an non-executive officer of the *company* pursuant to any applicable law;
- (iv) any natural person not appointed or elected as an officer of the *company* but who performs duties ordinarily performed by a duly appointed or elected officer of the *company* and who, as a result of performing these duties, incurs personal liability in this capacity; or
- (v) any natural person, appointed as statutory director of a *personal management entity*, if and to the extent that this entity is appointed as a director of the *policyholder*.

## **2.8 Discovery Period**

The period of time specified in article 3.1, immediately following the termination of this policy.

## **2.9 Employee**

Any natural person being a past, present or future employee of the *company* and who performs services for the *company* against a salary or remuneration and under the supervision of the *company*.

An *employee* does not include any non-executive director, consultants, independent service providers, temporary employees or agents of the *company* and their respective employees (including employees chartered from temporary employment agencies).

## **2.10 Employment practices violation**

Any actual or alleged act or neglect in respect of an employment practice of a former, present or future *employee* of the *company* arising out of, based upon or attributable to:

- (i) any unfair or wrongful dismissal, discharge or termination, either actual or constructive, of employment including any explicit or implicit violation of the labour contract;
- (ii) the furnishing of any misrepresentation in relation to the labour contract;
- (iii) employment-related misrepresentation, employment related breach of, violation of, or non-compliance with "EC Data Protection Directive (95/46 EC)" or "Data Protection Act 1984 and 1998" or any comparable legislation in any other jurisdiction;
- (iv) employment related libel, slander, humiliation, defamation, infliction of emotional distress, invasion of privacy;
- (v) the failure to employ or to promote, the wrongful deprivation of career opportunities, the wrongful demotion, the wrongful discipline;
- (vi) the failure to furnish a job description;
- (vii) the failure to evaluate job functioning; including the furnishing of improper or incriminating references of an employee in relation to an application, any neglect in respect of the hiring, the supervising or the maintaining;
- (viii) sexual, racial or disability harassment of any kind (including the alleged creation of a harassing workplace environment);
- (ix) illegal discrimination (including but not limited to discrimination based on age, gender, race, colour, nationality, religion, sexual orientation or preference, pregnancy of handicap);
- (x) failure to provide adequate *employee* policies and procedures;
- (xi) retaliation (including preclusion);
- (xii) violation of an individual's civil rights relating to any of the above listed;
- (xiii) the Wet gelijke behandeling mannen en vrouwen 1980, Article 7:646 Dutch Civil Code, "the Equal Pay Act 1970" and the "Employment Rights Act 1996".

## **2.11 Extradition proceedings**

any extradition proceedings including any appeal relating thereto, any judicial review applications challenging the designation of any territory for the purposes of any extradition law or challenging or appealing any extradition decision by the responsible governmental authority including the designation of citizenship in relation to *extradition proceedings* or applications to the European Court of Human Rights or similar court with respect to extradition proceedings.



#### **2.12 Financial Institution**

any entity that mainly renders diverse financial services, such as:

- (a) a bank, including a commercial, investment, savings, credit or mortgage bank
- (b) an investment advisor/manager
- (c) an investment fund
- (d) an investment management company
- (e) an asset manager
- (f) a private equity firm or fund
- (g) a venture capital company or fund
- (h) a stock broker firm,
- (i) an insurance company or

another financial services company or financial service provider.

#### **2.13 Investigation**

any formal investigation, hearing, examination or other similar procedure brought or made against an *insured* by an *official body*, provided that:

- (i) a notification as such is received during the *policy period* by the *director, officer, supervisory board member* or *employee*, and
- (ii) the investigation is not based on an event that affects the whole industry, in which the *policyholder* carries out its business activities, and is not only or primarily focused on the *policyholder* itself, and
- (iii) the *director, officer, supervisory board member* or *employee* is required to attend the investigation to provide documents, answer questions and/ or to be interviewed.

#### **2.14 Investigation costs**

all reasonable and necessary fees, costs and expenses of an *insured* as defined in article 2.15 (a) (except wages, salary or other remuneration of any *director, officer, supervisory board member* or *employee*) incurred with the *insurer's* written consent in connection with an *investigation*.

#### **2.15 Insured**

- (a) any past, present or future *director or officer or supervisory board member*;
  - (b) any past, present or future *outside director or officer*;
  - (c) *liquidator*;
  - (d) *corporate founder*;
- of the *company* to the extent that such *insured* is acting in such *insured's* capacity.

Any external accountant, any liquidator other than defined in article 2.17, any receiver or any administrator is excluded from coverage.

#### **2.16 Insurer**

This insurance is underwritten by AIG Europe S.A., an insurance company incorporated under the laws of Luxembourg with R.C.S. Luxembourg number B218806. AIG Europe S.A. has its head office at 35D Avenue John F. Kennedy, <http://www.aig.lu/>. AIG Europe S.A. is a non-life insurer authorised by the Luxembourg Ministère des Finances and supervised by the Commissariat aux Assurances 11 rue Robert Stumper, L-2557 Luxembourg, GD de Luxembourg, Tel.: (+352) 22 69 11 - 1, [caa@caa.lu](mailto:caa@caa.lu), <http://www.caa.lu/>.

The Dutch branch of AIG Europe S.A., also trading under its tradename AIG Europe, Netherlands, has its registered branch office at Chrystal Building B, Rivium Boulevard 216, (2909 LK) Capelle aan den IJssel. Chamber of Commerce number: 71305491 Correspondence address: AIG Europe, Netherlands, Postbus 8606, 3009 AP) Rotterdam. Tel: (+31) (0)10 453 5455. Fax: (+31) (0)10 452 8502. Dutch branch VAT number: NL858662590B01.

With respect to risks located in the Netherlands, AIG Europe S.A. also has to comply with the financial conduct rules deriving from the Dutch Financial Supervision Act, which are supervised by the Autoriteit Financiële Markten. Contact details of the Autoriteit Financiële Markten can be found at [www.afm.nl](http://www.afm.nl). In some or all respects, the regulatory systems applying in other countries where the Dutch branch of AIG Europe S.A. does business will be different from that of Luxembourg.



**2.17 Liquidator**

Any natural person, not appointed by a judge, who acts or has acted in statutory prescribed manner as a liquidator for the *company*.

**2.18 Loss**

the amount for which the *insured* as a result of a *claim* is legally held liable, including:

- (i) *defence costs*;
- (ii) damages resulting from a settlement negotiated with the *insurer's* consent;
- (iii) legal interest;
- (iv) *pre investigation cost*;
- (v) *investigation cost*;
- (vi) *public relations costs*;
- (vii) *emergency costs*;
- (viii) *bail bond and civil bond expenses*;
- (ix) *extradition defence costs*;
- (x) *prosecution costs*;
- (xi) any legal costs as described in article 3.9 Enterprise Chamber investigation;

Loss does not include:

- (a) criminal fines or penalties;
- (b) any other fines or penalties than defined under (a) in case of any wilful, negligent or any deliberate illegal behaviour or non compliance with the law;
- (c) compensation, in as far as this is not intended to indemnify the *insured* for *loss* incurred, including exemplary, punitive, aggravated or multiple compensations,
- (d) taxes, except when an *insured* in accordance with Article 1 Coverage or Extension 3.4 is personally held liable for the non-payment of the tax based on the law where the *claim* is filed and the *policyholder* or the *external legal entity* is unable to fulfill this tax in whole or in part due to bankruptcy/insolvency;
- (e) securities or share options;
- (f) severance payments or any labour contract related payments;
- (g) any amount for which the *insured* is not legally liable; and
- (h) the *loss* or that part of the *loss* which is deemed uninsurable under law.

Damages awarded or entered in a settlement or judgments against an *insured* and *defence costs* incurred in more than one *claim* against the *insured* but resulting from a *related wrongful act* shall constitute a single loss.

**2.19 Non profit entity**

an entity with non-profit goals, excluding organizations responsible for the implementation of employee schemes or employee benefit plans.

**2.20 Official Body**

any regulator, governmental body, governmental agency, official trade body, or any similar body having legal authority to investigate the affairs of a *company* or an *insured*.

**2.21 Outside entity**

- A. any legal entity under the condition that such legal entity:
  - (i) is not established in the United States of America or any state, territory or possession thereof;
  - (ii) is not listed on any securities exchange or market in the United States of America or any state, territory or possession thereof;
  - (iii) is not a *financial institution*,
  - (iv) is not a pension fund; or
  - (v) is not a *subsidiary* as defined in this policy, and is neither a "new subsidiary" as meant in article 3.2 of this policy.
- B. a *non profit organisation*.

**2.22 Outside Entity Director or Officer**

any natural director who at the specific written request of the *company*, has been appointed, is appointed or will be appointed as a director, officer or in an equivalent position at an *outside entity*.

**2.23 Personal management entity**

A legal entity which purpose is to have the management of the *company* and only in as





far as a majority of the voting rights of this entity is in the possession of the natural person, who also owns the respective legal entity.

**2.24 Policyholder**

the entity as specified on the Schedule.

**2.25 Pollutant**

any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including, but not limited to, asbestos, lead, smoke, vapor, dust, fibers, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

**2.26 Policy Period**

the period as specified on the Schedule with a tacit renewal of a period of 12 months unless:

- (a) a *transaction* as described in article 7.6 occurs; or
- (b) the *policyholder* or the *insurer* cancels the policy at least two months before the policy period expires or the following period.

**2.27 Pre- investigation**

(a) any official written request to an *insured* to:

- (i) appear at a meeting or interview; or
  - (ii) produce documents, records or electronic information,
- whereby the request relates to the *insured* in his insured capacity, but only if the request is being made by:

- (a) an *official body*;
- (b) a *company*, or on behalf of the *company*, the Board of Directors (or comparable management board), or any commission of the Board of Directors (or comparable management board) and which derives from any enquiry or request by an *official body* in relation to a *company* or an *insured* in their insured capacity.

(b) a raid on, or on site visit to any *company* or any *outside entity* by an *official body* :

- (i) that involves an interview of an *insured*; or
- (ii) the production, review, copying, or confiscation of documents, records or electronic information or interviews of an *insured*.

*Pre-investigation* shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a *company's* and / or *official body's* normal review or compliance process.

**2.28 Pre-Investigation Costs**

reasonable fees, costs and expenses incurred with the *insurer's* prior consent by an *insured* in connection with preparing for and attending a *pre-investigation* in which the *insured* is involved or in connection with answering questions/an interview or complying with requests, made within this framework/context.

*Pre-Investigation Costs* shall not include:

- (a) wages, salary or any remuneration of any *insured*;
- (b) costs of whatever kind, made by any *company*, made by the party requesting to provide the information or any other party involved in the *investigation*, other than the *insured*;
- (c) any costs incurred by or on behalf of any *company*.

**2.29 Public Relations Costs**

Reasonable and necessary fees, costs and expenses incurred by external public relations professionals with the *insurer's* prior written consent in order to mitigate damage to the *insured's* reputation due to a covered *claim*, as far as objectively established by media reports or other publicly available third-party data.



## **2.30 Related Wrongful Act(s)**

- (a) a series of the same, related or continuous *wrongful acts*, or
- (b) *wrongful act(s)*, which arise from a common nucleus of facts.

Various *claims* can allege one related wrongful act regardless of whether such *claims* involve the same or different claimants, *insureds* or legal causes of action.

## **2.31 Securities**

- (a) any negotiable security or other similar negotiable instrument of the *company*;
- (b) any negotiable note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security of the *company*, or;
- (c) any other negotiable security issued by a legal entity, company or institute by which any securities as meant in sub (a) or (b) may be obtained by exercising the rights attached thereto or may be obtained through conversion or be settled.

## **2.32 Subsidiary**

a corporation in which the *policyholder*, either directly or indirectly through one or more of its subsidiaries:

- (i) holds a majority of the voting rights, or
- (ii) has the right to appoint or remove a majority of its board of directors, or
- (iii) controls solely, pursuant to an agreement with other shareholders or members, a majority of the voting rights,

Subsidiary also means:

- (a) Stichting Continuïteit of the *policyholder*
- (b) Stichting Administratiekantoor of the *policyholder*

Cover for any *claim* against an *insured* of any *subsidiary* shall apply only for *wrongful act(s)* committed or allegedly committed while such *company* is or was a *subsidiary* of the *policyholder*.  
in cash.

## **2.33 Wrongful Act**

any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the *insureds* in their respective capacities as stipulated in article 2.15 or act committed by any other *insured* but for which this *insured* is held liable in his capacity as stipulated in article 2.15.

# **ARTICLE 3 - Extensions**

With due consideration of all conditions of this policy, the coverage is extended as follows:

## **3.1 Discovery period**

If either the *insurer* or the *policyholder* shall refuse to renew this policy, the *policyholder* or an *insured* shall have the right, upon payment of an additional premium in accordance with the following table, to a *discovery period* of:

- 1 year upon payment of no additional premium;
- 2 years upon payment of an additional premium of 50% of the expiring annual premium;
- 3 years upon payment of an additional premium of 75% of the expiring annual premium;
- 5 years upon payment of an additional premium of 125% of the expiring annual premium;
- 6 years upon payment of an additional premium of 150% of the expiring annual premium.

The *discovery period* will be effective from the date of non-renewal, provided that the additional premium due is received by the *insurer* within 30 days of the effective date of non-renewal. The additional premium for the *discovery period* shall be fully earned at the inception of the *discovery period*. The *discovery period* is not cancellable.

The right contained in this clause shall terminate, in case:

- (i) the request to obtain a *discovery period* of 1 year or the election to buy any other



*discovery period* is not received by the *insurer* within 30 days of the effective date of non-renewal; and

- (ii) the *company* takes out another directors and officers liability policy; or
- (iii) this policy is cancelled due to non payment of premium; or
- (iv) the *policyholder* accepts a proposal of the *insurer* for a new insurance by means of renewal of this insurance, even if this includes other conditions.

This extension is not applicable in case of a *transaction* as described in article 7.6.

### 3.2 New subsidiaries

If during the *policy period* the *policyholder* acquires or creates either directly or indirectly through one or more of its *subsidiaries* any entity, this entity will be considered automatically as a subsidiary as per the date of acquisition or creation, unless such *subsidiary*:

- (i) is incorporated or formed in the United States of America or any state, territory or possession thereof; or
- (ii) has any of its *securities* listed on any securities exchange or market; or
- (iii) has a total annual revenue which is more than 50% of the total consolidated revenue of the *company* as reported in their most recent annual account; or
- (iv) is a *financial institution*.

If a newly acquired or created *subsidiary* falls into (i), (ii), (iii) or (iv) above, such entity will be covered as a "*subsidiary*" for a period of ninety (90) days from the date of acquisition or creation of such *subsidiary*, or until the end of the *policy period*, which ever occurs first.

The *insurer* may extend coverage for any such *subsidiary* beyond the ninety (90) day period, if during the ninety (90) day period the *policyholder* requests in writing an extension of this policy for such *subsidiary*, in writing to the *insurer*, and

- (a) the *policyholder* provides the *insurer* with sufficient details to allow the *insurer* to assess and evaluate the *insurer's* potential increase in exposure and
- (b) the *policyholder* agrees to any additional premium and amendments to the policy terms and conditions required by the *insurer*.

Regarding the *insured* of a new *subsidiary*, this policy only provides coverage for *wrongful acts* committed during the time that the entity is a *subsidiary* of the *policyholder*.

Only after a written request by the *policyholder*, the *insurer* may at its sole discretion decide whether coverage will be offered for *wrongful acts* committed prior to the date of acquisition or creation of the entity first becoming a *subsidiary* of the *policyholder*.

### 3.3 Estates, Heirs and Legal Representatives

In the event of death, receivership, insolvency or bankruptcy of an *insured* or in the event of any other similar procedure, the *insurer* will pay the *loss*, deriving from a *claim* that is made against the estates, heirs or legal representatives of such an *insured*, provided that such a *claim* concerns a *wrongful act* of that *insured*.

The *insurer* will also pay the *loss* deriving from a *claim* which is made against the lawful spouse or other legally recognized domestic partner of the *insured*, which is solely the result of his or her status as spouse or partner of the *insured*, including a *claim* whereby recovery is undertaken on matrimonial property, jointly possessed assets or assets that have been transferred by the *insured* to its lawful spouse or legally recognized domestic partner. This extension of coverage is only applicable to a *claim* deriving from a *wrongful act* of the individual *insured* and does not cover a *claim* that is based on a *wrongful act* of the spouse or partner.

### 3.4 Outside directorship at an Outside Entity

The *insurer* will pay the *loss* incurred by an *outside director*.

This cover shall be specifically in excess of

- (a) any insurance of any *outside entity* and/or
- (a) any indemnification provided by any *outside entity*.



### 3.5 **Discovery Period Retired Director, Officer and Supervisory Board Member**

If the *policyholder*:

- (1) does not renew or replace this policy by any other directors and officers liability policy and
  - (2) does not elect for a *discovery period* as described in article 3.1,
- this policy will provide an automatic 120 months *discovery period* in which a *claim* that was first made against an *insured* who already retired before the cancellation date of the policy, can be reported. The *claim* needs to be based on a *wrongful act* committed by such an *insured*, that was committed prior to the date of cancellation of this policy.

This exclusion is not applicable in the case of an *transaction* as described in article 7.6.

### 3.6 **Prosecution Costs**

Subject to its prior written consent the *insurer* will pay, where legally permitted, the reasonable *defence costs* of the *insured*, to obtain the discharge or revocation of a judicial order issued by a *official body* entered during the *policy period* imposing:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real estate property or personal assets of such *insured*;
- (b) a charge over real estate property or personal assets of such *insured*;
- (c) a temporary or permanent prohibition on such *insured* from holding the office of or performing the function of a *director*, an *officer* or a *supervisory board member*;
- (d) restriction of such *insured's* liberty to a specified official detention or a domestic residence;
- (e) deportation of an *insured* following revocation of otherwise current and valid immigration status for any reason other than such *insured's* conviction of a criminal act.

### 3.7 **Additional Defence Costs**

If the *limit of liability* as specified on the Schedule is exhausted by payment of a *loss*, an additional *limit of liability* is available of 25% of the *limit of liability*, as specified on the Schedule. In all cases this additional *limit of liability* will not exceed the amount of EUR 1.000.000,-- and can only be used for *defence costs*.

### 3.8 **Wrongful Employment Practice**

The *insurer* will pay the *loss* incurred by an *insured* in relation to a *wrongful employment practice*.

### 3.9 **Enterprise Chamber investigation**

The *insurer* will pay, subject to prior written consent of the *insurer*, the reasonable legal costs of the *insured* for the preparation of a hearing in relation of an investigation commissioned by the Enterprise Chamber on the basis of article 351 paragraph 1 from Book 2 Dutch Civil Code, but only to the extent that the *insured* in his (insured) capacity is required to provide information during a hearing or interview on the basis of article 351 paragraph 1 from Book 2 Dutch Civil Code. Any costs covered under this extension will not include any costs incurred by or made on behalf of the *company*.

## **ARTICLE 4 - Defence Costs, Settlement and Allocation**

### 4.1.1 **Payment of defence costs, investigation costs, costs public relation costs, emergency costs**

The *insurer* will pay in advance on behalf of the *insured* *defence costs*, *investigation costs*, *public relation costs*, *emergency costs* during the handling of a *claim* and/or an *investigation*. These advances will be provided after receipt and approval by the *insurer* of the submitted invoices.



#### **4.1.2 Indemnification by the company**

If the *company* is required to indemnify the *insured*, it shall be responsible for the full amount of the retention specified in the Schedule.

In the event and to the extent that the *company* fails to do so for whatever reason, the *insurer* will advance all *defence costs* to the *insured* on behalf of the *company*. In this case, however, the retention amount specified in the Schedule shall be repaid by the *company* to the *insurer*, unless the *company* is insolvent.

#### **4.2 Written approval insurer**

Only with the prior written approval of the *insurer* the *insured* may:

- (a) admit or assume any liability, enter into any settlement agreement or agree to the stipulation of such a settlement agreement into a verdict,
- (b) incur *defence costs*, *pre-investigation costs*, *investigation costs*, *rehabilitation costs* or *public relation costs*.

The *insurer's* consent shall not be unreasonably withheld or delayed.

Only liability, settlements, stipulated judgments, and costs to which the *insurer* has consented shall be recoverable as *loss* under the terms of this policy, with the exception of the situation as described in article 1.6 (coverage emergency costs).

#### **4.3 Defence, right to defend**

Any *insured* shall have the obligation to defend any *claim* made.

The *insurer* shall have the right to effectively associate with the *company* and the *insured* in the defence of any *claim*. The *company* and the *insured* shall give the *insurer* full cooperation and will provide all information reasonably required or requested by the *insurer*.

#### **4.4 Charge**

Where a third party, other than an *insured*, seizes this policy, the *insurer* has the right and authority to appoint a lawyer to act on its behalf and to instruct and authorise that lawyer to:

- (i) lift the seizure and
- (ii) defend any *claim* during the period of seizure.

The *insurer* shall directly reimburse the lawyer for costs associated with the instruction given in accordance with the above, up to a maximum of 10% of the *limit of liability*. This amount will not exhaust the *limit of liability* as stipulated on the Schedule.

#### **4.5 Allocation**

If any *defence costs* being made for the benefit of the *company*, or in case of any obligation to pay a *loss* with respect to the *company*, the *insurer* will have no obligation to pay any such *loss*.

In the event that any *claim* involves both covered matters and matters not covered and/ or a *claim* made against both the *company* and the *insured*, then the following applies with respect to:

- (i) *defence costs* jointly incurred;
- (ii) any joint settlement entered into; and/ or
- (iii) any judgment of joint and several liability;

it has been agreed that the *company*, the *insured* and the *insurer* shall use their best efforts to determine a fair and proper allocation between the *company*, the *insured* and the *insurer* taking into account the relative legal and financial exposures.

In the event that the *insurer* and the *company* do not agree on the allocation of the *loss*, the *insurer* will advance any amount which the *insurer* states to be fair and proper until a different amount is agreed upon or determined pursuant to the provisions of this policy and applicable law.



## **ARTICLE 5 – Notice, Claim and Reporting Provisions**

### **5.1 Notice of a claim or a circumstance**

The *company* or an *insured* should notify a *claim* during the *policy period* or during the *discovery period*. The *claim* needs to be reported as soon as reasonably possible:

- (a) during the *policy period* or;
- (b) within 60 days after the end of the *policy period* or the applicable *policy period* provided that the date of notice is no later than 60 days after the *insured* being familiar with this *claim*.

The aforementioned in subparagraph (b) of this article is not applicable if this policy is non-renewed by either party.

The *company* or an *insured* may during the *policy period* or during the *discovery period* notify a circumstance which reasonably expects to give rise to a *claim*. A notification of such a circumstance shall contain at the least the following information:

- (a) the reason why it is expected that a *claim* will arise;
- (b) the date of the alleged *wrongful act* which forms the basis of the circumstance;
- (c) a description of the alleged *wrongful act*;
- (d) the potentially involved *insured*;
- (e) the potential claimants.

Any *claim* or circumstance shall be notified in writing to:

AIG Europe, Netherlands  
Rivium Boulevard 216-218  
2909 LK Capelle aan den IJssel  
or per e-mail:  
[Casualty.FinLines@aig.com](mailto:Casualty.FinLines@aig.com)

The date on which the notification of a *claim* or circumstance has been received by mail or received by e-mail, shall constitute the date of notification. Official evidence of postal delivery or confirmation of receipt by e-mail, shall constitute sufficient proof of notice.

- 5.2** If during the *policy period* or during the *discovery period* written notice has been given for the first time to the *insurer* of any *claim*, circumstance or circumstances, then any *claim* made against an *insured* and reported to the *insurer* following this notification arising out of, based upon or attributable to a *related wrongful act*, shall be considered to be made at the moment of the first notification.

## **ARTICLE 6 - Exclusions**

The *insurer* shall not be liable for any *loss* in relation to any *claim*:

- 6.1** arising out of, based upon or attributable to any *insured* gaining in fact any personal profit or advantage or receiving any remuneration to which it was not legally entitled;
- 6.2** arising out of, based upon or attributable to the committing in fact of any criminal act or wilful misconduct, including any fraudulent act;

These abovementioned exclusions shall only apply if it is established through a judgment in or outside a court that an *insured* has actually acted accordingly.





- 6.3** arising out of, based upon or attributable to:
- (i) *wrongful act(s)* contained in any *claim*
    - (a) which has/ have been reported under any policy of which this policy is a renewal or replacement or under any other policy which precedes this policy; or
    - (b) in connection with any circumstances of which notice has been given under any policy of which this policy is a renewal or replacement or under any policy which precedes this policy;
  - (ii) any actual or alleged facts or circumstances of which any *insured* prior to the inception date of this policy knew or could have reasonably foreseen that such a fact or circumstance could give rise to a *claim*.

- 6.4** arising out of, based upon or attributable to any pending or prior litigation as of or before the pending and prior litigation *continuity date* or alleging or deriving from the same or essentially the same facts as alleged in the pending or prior litigation before the *continuity date*;

- 6.5** for
- (i) bodily injury, sickness, emotional or mental distress, disease or death of any person, or
  - (ii) loss of or damage to or destruction of any property.

This exclusion shall not apply to *claims* made against an *insured* for:

- (a) *defence costs* of an *insured* in relation to the cover as described in article 1.1;
- (b) *claims* in connection with a *wrongful employment practice*.

- 6.6** arising out of, based upon or attributable to or in any way involving, directly or indirectly,
- (i) the actual, alleged, imminent or threatened discharge, dispersal, seepage, release or escape of any *pollutant*; or
  - (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants*, nuclear material or nuclear waste.

Provided, however, that this exclusion shall not apply to

- (a) any *claim* outside the United States of America, or any state, territory or possession thereof, brought or maintained against the *insured* by any shareholder of the *company* either directly or derivatively, alleging damage to the *company* or its shareholders;
- (b) for any *defence costs* incurred in relation to a *claim* made against an *insured* outside the United States of America, or any state, territory or possession thereof.

- 6.7** brought by or on behalf of a *company* or an *outside entity* against an *insured* in the United States of America, or any state, territory or possession thereof and which is brought by or on behalf of a *company* or an *external legal entity*.

This exclusion shall not apply to:

- (a) any *claim* against any *insured*
  - (i) through a shareholder derivative action brought or maintained on behalf of the *company* or an *external legal entity* with the exception of those *claims* that have been brought with the solicitation or active participation of any *company* (with the exception of whistleblower activities);
  - (ii) for any *wrongful employment practice(s)*;
  - (iii) brought or maintained by a liquidator, receiver or administrative receiver or similar person under the laws of any other jurisdiction, either directly or derivatively on behalf of the *company* or *outside entity*.
- (b) whistleblower activities;
- (c) *defence costs* of an *insured*.

Provided that for the purposes of the aforementioned exclusions, with the exception of 6.3 and 6.4, the *wrongful act* of an *insured* shall not be imputed to any other *insured*.



## **ARTICLE 7 - General Provisions**

### **7.1 Limit of liability**

The *limit of liability* is the maximum limit of the *insurer's* liability for all *loss*, relating to the coverages as defined under this policy and including the coverage under any *discovery period*.

*Defence costs* are not payable by the *insurer* in addition to the total aggregate limit of liability (with the exception of the costs stipulated in article 3.7). *Defence costs* are part of *loss*.

### **7.2 Retention**

The *insurer* shall only be liable for the amount of *loss* arising from a *claim* which is in excess of the retention specified in the Schedule. The retention is to be borne by the *company* and shall remain uninsured.

### **7.3 Subrogation**

In the event of any payment under this policy, the *insurer* shall be subrogated to the extent of such payment to all the *company's* and *insured's* rights of recovery in respect of the payment, to the extent that it is established that exclusions 6.1 and 6.2 is applicable to the relevant *claim* and the *insured* involved.

The *company* and the *insureds* shall execute all necessary documents required and shall do everything that may be necessary to secure all rights including the execution of all documents necessary to enable the *insurer* effectively to bring suit in the name of the *company* and/or the *insureds*.

### **7.4 Payment of premium**

**7.4.1** Premium, costs and insurance tax shall be paid in advance, but not later than the 30th day after which it has become due.

**7.4.2** If the premium due has not been paid in time, no cover will be granted in respect of *claims* which have been made after a lapse of 15 days when a notice of default was provided to the *policyholder* by the *insurer*. The coverage will be reinstated as soon as the amount due has been received by the *insurer*.

### **7.5 Basis of the insurance, Declarations of Policyholder and Insured**

The *insurer* grants cover on the basis of the information and declarations as provided in the application form, the statement of agreement, the attachments, the financial information of the *policyholder* and other information that has been at time of entering this insurance. All of the available information and provided statements are the basis of cover and shall be considered incorporated into and constituting part of this policy. The stipulations of article 7:928 section 6 Dutch Civil Code is applicable to this insurance.

The *insurer* waives any rights in relation to the violation of the duty to inform as stipulated in articles 7:929 etc. of the Dutch Civil Code, unless wilful conduct is established. If an *insured* proves that he cannot be held accountable, no legal consequences will be invoked.

### **7.6.1 Discovery Period subsequent to Acquisition, Merger, Liquidation or Bankruptcy**

If during the *policy period*:

- (i) the *policyholder* shall consolidate with or merge into, or sell all or substantially all of its assets to, any other legal entity or natural person; or
  - (ii) a (group of) natural person(s) and/or legal entity/entities acting alone or in concert :
    - (a) who acquire an amount of the outstanding securities representing more than 50% of the voting rights in relation to the shares of the *policyholder*, which gives the right to appoint *directors* or *officers* of the *policyholder*, or
    - (b) who acquire an additional share as a result of which more than 50% of the voting rights is established within *policyholder*,
  - (iii) the *policyholder* goes into bankruptcy proceedings
- (either of the above events herein referred to as a *transaction*) then, the coverage afforded under this policy shall only apply to *claims* deriving from *wrongful acts* committed prior to the effective date of the *transaction*.





- 7.6.2** If during the *policy period* the *policyholder* takes the decision to liquidate the *policyholder* (this event herein referred to as “decision to liquidate”), the coverage afforded under this policy until the end of the *policy period* shall only apply to *claims* deriving from *wrongful acts* committed prior to the effective date of the “decision to liquidate”, as well as any *wrongful acts* committed by the *liquidator* from the date of “decision to liquidate” until the moment on which (a) the liquidation is completed because the *policyholder* has no longer any known revenues or ((b) the *policyholder* goes into bankruptcy proceedings as defined in article 7.6.1. (iii).

In the event of a *transaction* as defined under article 7.6.1. or the completion of a liquidation as defined in article 7.6.2. (a), the *policyholder* shall have the right, within 60 days after the event but no later than 30 days after the end of the *policy period*, to buy a *discovery period* and the premium involved has been paid on the basis of the following:

1 year against an additional premium of 25% of the expiring annual premium;  
2 years against an additional premium of 50% of the expiring annual premium;  
3 years against an additional premium of 75% of the expiring annual premium;  
4 years against an additional premium of 100% of the expiring annual premium;  
5 years against an additional premium of 125% of the expiring annual premium;  
6 years against an additional premium of 150% of the expiring annual premium.

**7.7 Change in Risk during the Policy Period**

If during the *policy period*, the *company* decides to offer securities either publically or privately in any jurisdiction, then the *company* shall provide the *insurer* with the prospectus, the offer, any statement and any document that needs to be filed at the supervisory body involved. Upon receipt and review of the information, the *insurer* maintains the right to change the terms and conditions of this insurance and/or demand any additional premium.

**7.8 Geographical Scope**

This insurance provides coverage for all *loss* as a result of *claims* brought anywhere in the world.

**7.9 Sanctions**

If, by virtue of any law or regulation which is applicable to an *insurer*, its parent company or its ultimate controlling entity, at the inception of this policy or at any time thereafter, providing coverage to the *insured* is or would be unlawful because it breaches an applicable embargo or sanction, that Insurer shall provide no coverage and have no liability whatsoever nor provide any defense to the *insured* or make any payment of defense costs or provide any form of security on behalf of the *insured*, to the extent that it would be in breach of such embargo or sanction.

**7.10 Other insurance**

Unless otherwise required by law, any cover as is provided by this policy shall apply only as excess over any other valid and collectible insurance or any insurance that would have been valid and collectible in the absence of this policy.

If in any other insurance (s) a similar provision equivalent to the above applies, or if the *insured* for any reason wishes to receive a loss payment under this policy in stead of any other insurance, the *insurers* shall handle the *loss* and pay a sum , equal to the amount that would have been paid, if the other insurance( s) would not have existed, against which the *insured* will cede his rights on the insurers of the other insurance( s) to the extent of any payment done, such in accordance with article 4.3. The foregoing will also be applicable if insurers have paid any loss without any obligation to do so.

**7.11 Assignment**

This policy and any and all rights hereunder are not assignable without the written consent of the *insurer*.



#### 7.12 Notice / Written notice.

The *policyholder* shall act on behalf of its *subsidiaries* and all *insureds* with respect to all acts and obligations in relation to this policy. This clause however, will not limit the *insured's* right to:

- (i) elect a *discovery period*, or
- (ii) report a *claim* or a circumstance.

All current or future written communications done by the *policyholder* or the *insurer* shall be construed as done once they have been notified to the broker.

#### 7.13 Applicable law

This policy and all the rights and obligations relating thereto from all involved parties shall be governed with all aspects by Dutch law only.

#### 7.14 Disputes

Parties will undertake all efforts to resolve disputes arising out of this policy amicably. If it appears that a amicable settlement is not possible, than all disputes will be submitted to the competent court in Rotterdam, the Netherlands, without prejudice to the right of all parties to agree on any other form of alternative dispute resolution.

#### 7.15 Complaints

Every effort is made to ensure you receive a high standard of service. If you are not satisfied with the service you have received, you should contact:

AIG Europe, Netherlands  
Postbus 8606  
3009 AP Rotterdam  
Tel: 010 453 54 55  
Fax: 010 452 85 02

In case the opinion of the *insurer* is not satisfactory for the *policyholder* the *policyholder* can ask the opinion of:

**KiFiD** (Het Klachteninstituut Financiële Dienstverlening)  
Postbus 93257  
2509 AG Den Haag  
Tel: 0900-3552248

As AIG Europe S.A. is a Luxembourg based insurance company, in addition to the complaints procedure set out above, you have access to Luxembourg mediator bodies for any complaints you may have regarding this Policy. Contact details of the Luxembourg mediator bodies are available on AIG Europe S.A.'s website: <http://www.aig.lu/>

In case none of these options are satisfactory the *policyholder* always has the ability to ask the opinion of a competent court.

#### 7.16 Personal Data

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- Beheer van verzekeringscontracten, bv. communicatie, het verwerken en behandelen van schades en betalingen;
- Het beoordelen van en het maken van beslissingen over het verstrekken van dekking, de verzekeringsvoorwaarden en de schaderegeling;
- Ondersteuning en advies betreffende medische en reisaangelegenheden;
- Beheer van onze commerciële activiteiten en IT-infrastructuur;
- Voorkoming, detectie en onderzoek van misdrijven, bv. fraude en witwaspraktijken;
- Instelling, uitoefening of onderbouwing van een rechtsvordering;
- Naleving van wet- en regelgeving (waaronder naleving van wetten en voorschriften buiten het land waar u gevestigd bent);
- Monitoren en opnemen van telefoongesprekken voor kwaliteits-, trainings- en beveiligingsdoeleinden;
- (Interne) audit;
- Marketing, marktonderzoek en analyse.

Indien u geen marketingcommunicatie meer wenst te ontvangen, neem dan via e-mail contact met ons op: [gegevensbescherming.nl@aig.com](mailto:gegevensbescherming.nl@aig.com) of door te schrijven naar: AIG Europe, Netherlands, t.a.v. de Functionaris voor de gegevensbescherming, Rivium Boulevard 216 - 218, 2909 LK Capelle aan den IJssel. Mocht u geen marketingcommunicatie meer wensen te ontvangen, dan kunnen wij nog wel andere belangrijke service- en administratieberichten sturen in verband met diensten die wij aan u leveren.

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