

כאן

תאגיד השידור הישראלי

נספח ג'

מפרט נושאי משרה



Directors and Officers Liability

Insurance

For

KAN –

Israeli Public Broadcasting

Corporation.

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2. *Wording*

UMR/Policy no. _____

Directors & Officers Liability Insurance

Schedule

Item 1.	<i>Policyholder</i>	KAN – Israeli Public Broadcasting Corporation. (“KAN”) Including the News Corporation Department	
	<i>Address</i>	35 Kanfey Nesharim, Jerusalem	
Item 2.	<i>Policy Period</i>	From: <u>12 Months – commencement TBA</u> To: (both days inclusive)	
Item 3.	<i>Limit of Liability</i>	Total aggregate for all <i>loss</i> , arising out of all <i>claims</i> made against all <i>insureds</i> under all insurance covers combined (including <i>defense costs</i> other than as noted in amended General Provision 5.3): NIS 40,000,000 (Forty Million New Israeli Shekels)	
Item 4.	<i>Retention</i>	Insurance cover A : Nil Insurance cover B and indemnifiable loss : NIS 20,000 except for <i>claims</i> in USA or Canada NIS 100,000 for <i>claims</i> made in USA or Canada As specified in 5.4 Retention, only one retention shall be applied for <i>loss</i> arising from any <i>claim</i> or <i>claims</i> alleging a <i>single wrongful act</i> .	
Item 5.	<i>Premium</i>	Annual Premium	NIS _____
Item 6.	<i>Continuity Dates</i>	Pending & prior litigation:	01.05.2016
		Pollution claims:	01.05.2016
Item 7.	<i>New Subsidiary Cover</i>	Assets size: 25% (in accordance with Extension 4.2: <i>New Subsidiaries</i>)	
Item 8.	<i>Retroactive Date</i>	Unlimited	
Item 10.	<i>Territorial Limit & Jurisdiction:</i>	Worldwide <u>including</u> USA/Canada	
Item 11.	<i>Policy Interpretation & adjudication:</i>	solely in accordance with Israeli Law and Israeli courts.	
Item 12.	<i>Policy Form:</i>	Manuscripted Corporate Guard for Directors & Officers (as attached)	

SIGNED FOR AND ON BEHALF OF THE INSURER

.....

Date

KAN Manuscripted Corporateguard Directors & Officers Liability Insurance

In consideration of and/or subject to the undertaking to pay the premium, the *insurer* agrees as follows:

1. Insurance Cover

A: DIRECTORS AND OFFICERS LIABILITY

The *insurer* shall pay the *loss* of each *insured* resulting from any *claim* first made against the *insured* during the *policy period* and notified to the *insurer* during the *policy period* or within 60 days of expiry thereof for any *wrongful act* in the *insured's* capacity as a *director* or *officer* of the *company* except for and to the extent that the *company* has indemnified the *insured*.

B: CORPORATE REIMBURSEMENT

The *insurer* shall pay the *loss* of the *company* or any other governmental body resulting from any *claim* first made against the *insured* during the *policy period* and notified to the *insurer* during the *policy period* or within 60 days of expiry thereof for any *wrongful act* in the *insured's* capacity as a *director* or *officer* of the *company* but only when and to the extent that the *company* has indemnified the *insured* for the *loss*.

Subject to the terms and conditions of this policy, the *insurer* shall advance *defence costs* resulting from any *claim* before its final resolution.

2. Definitions

2.1 **Associated Company** means any entity of which the *company* owns on or before or after the inception of the *policy period* or acquires during the *policy period* any amount which is less than 50 per cent of the issued and outstanding voting or equity shares either directly or indirectly through one or more of its *subsidiaries*.

2.2 **Claim** means:

- (i) any suit or proceeding including but not limited to any civil proceeding, third party proceeding, counter claim, as well as arbitration or mediation proceeding brought by any person or organisation against an *insured* for monetary damages or any other relief, including non-pecuniary relief;
- (ii) any written demand or any other written notification from any person or organisation that with accordance to *insured's* judgment it is the intention of the person or organisation to hold an *insured* responsible for the results of any *wrongful act* including with respect to any employment practices violation;
- (iii) any criminal proceedings or any criminal prosecution brought against an *insured*;
- (iv) any administrative, disciplinary, regulatory proceeding, , or official or unofficial investigation or examination regarding any *wrongful act* of an *insured*;
- (v) any *employment practice violation* claim.

any *claim* or *claims* arising out of, based upon or attributable to a *single wrongful act* shall be considered to be a single *claim* for the purposes of this policy.

2.3 **Company** means the *policyholder* specified in Item 1 of the Schedule and any *subsidiary*, *subsidiary* of a *subsidiary*, division, unit, sector, region, product group or other internal company structure or segment detailed in an organization chart or similar document and which has been granted this status by the *policyholder* or any *subsidiary* before the date of the *wrongful act*. The expression *company* shall also include any partnership which the *policyholder*, either directly or indirectly through one or more of its *subsidiaries* or partnerships:

- (I) controls the management of the partnership, or
- (II) controls half or more of the voting power of the partnership.

- 2.4 **Continuity date(s)** means the date(s) specified in Item 6 of the Schedule. The pending and prior litigation *continuity date* shall be the date from which the *policyholder* has maintained uninterrupted cover with the *insurer*, or with any other insurer if the initial proposal form submitted to such insurer is provided to and accepted by the *insurer* at the inception of this policy, or such other date(s) as agreed with the *insurer*.
- 2.5 **Defence costs** means necessary fees, costs and expenses incurred with the written consent of the *insurer*, which shall not be unreasonably withheld or unduly delayed (including premiums for any appeal bond, attachment bond or similar bond, but without obligation to apply for or furnish any bond) resulting solely from the investigation, adjustment, defence and appeal of any *claim* but shall not include the salary of any *insured*.
For the avoidance of doubt it is agreed that should there appear to be a conflict of interests between any of the insured and/or the *company*, then at their request, separate counsel may be appointed to protect their respective interests.
- 2.6 **Director or officer** means:
- a. All persons who were, now are, or shall be elected or appointed Directors and/or Officers of the *company*,
 - b. All persons who were, now are, or shall be elected or appointed as Members of the Israeli Public Broadcasting Council (“Moetzet Harashut”) and as members of its Subcommittees,
 - c. All persons who were, now are, or shall be construed to be *Directors and/or Officers* of the *company* within the meaning of any applicable statutes, bylaws, memorandum and Articles of Association or other law or regulation governing such matters within the jurisdiction of the domicile of the *Company*,
 - d. Any of the following but not limited to: any director, substitute director, observer (active or otherwise) participating in board meetings of the *company*, managing director, chief business officer, chief financial officer, the president, general manager, chief executive officer, deputy general manager, vice general manager, internal legal advisor, internal auditor, controller, treasurer, comptroller, ombudsman, secretary of the company, authorized signatory, *company* committee members, and any other manager or executive directly subordinate to the president, general manager, or chief executive officer, or any persons who fills one of the said positions in the *company* even if his title differs,
 - e. Director or Officer shall also mean any employee of the *company*, but only for a *claim* or *claims* alleging *wrongful act(s)* committed by the employee in a supervisory role or managerial capacity.
 - f. Any person which holds signatory rights on behalf of the *company*, including but not limited to any signatory rights of any disclosure included in any financial report or in any other regulatory report of the *company*.
- 2.7 **Discovery period** means the period of time specified in Extension 4.4, immediately following the termination of this policy during which written notice may be given to the *insurer* of any *claim* first made against the *insured* during such period of time for any *wrongful act* occurring prior to the end of the *policy period* and otherwise covered by this policy.
- 2.8 **Employment practice claim** means a *claim* alleging an *employment practice violation*.
- 2.9 **Full annual premium** means the annual premium level in effect immediately prior to the end of the *policy period*.
- 2.10 **Insured** means any person who was, is, or shall become a *director* or *officer* of the *company*. Cover will automatically apply to any person who becomes a *director* or *officer* after the inception date of this policy.

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Without derogating from the generality of the above, the expression *insured* shall expressly include:

- (i) any non-payroll officer of the *company*, engaged in accordance with a management, services, or consulting agreement signed with the *company* or between the *company* and an entity controlled by the non-payroll officer. The *insurer* shall not exercise its right of subrogation against the actual entity receiving the payment or its employees, unless the non-payroll officer by whom the entity is controlled, has been convicted of a deliberate criminal act, or has been determined to have committed a deliberate fraudulent act, or has obtained any profit or advantage to which the non-payroll officer or the said entity were not legally entitled.
- (ii) Any officer of a *subsidiary* whose salary is paid (in part or in full) by the *policyholder* or by any other *subsidiary*.

2.11 **Insurer** means the (re)insurance companies or underwriters listed as signing this policy.

2.12 **Loss** means:

- i. damages, judgments, settlements and *defence costs*,
- ii. civil fine or penalty where lawfully insurable by the laws of the jurisdictions in which such civil fine or penalty is payable and in which such fine or penalty was ordered to be paid, subject to a Sub-limit of NIS 1,000,000.
- iii. punitive and exemplary damages.
- iv. compensation / payment to third parties in accordance administrative enforcement proceedings which are insurable by law.

However loss shall not include:

- i. criminal fines or penalties imposed under statute or law which are uninsurable,
- ii. taxes,
- iii. any amount, other than *loss* incurred by the *company* as indemnification of the *insured*,
- iv. punitive and exemplary damages awarded in an *employment practice claim* except for employment related defamation.

Damages, judgement, settlements, and defence costs in more than one *claim* against the *insured* but resulting from a *single wrongful act* shall constitute a single *loss*.

For the avoidance of doubt, *loss* includes defence costs incurred by an *insured* in the defence of a criminal prosecution of an offence which does not require criminal intent, even if convicted.

2.13 **No liability** means:

- (i) a final judgment of no liability obtained prior to trial in favour of all insureds by reason of a motion to dismiss or a motion for summary judgment after the exhaustion of all appeals; or
- (ii) a final judgment of no liability obtained after trial in favour of all insureds, after the exhaustion of all appeals.

In no event shall the term no liability apply to a claim made against an insured for which a settlement has occurred.

2.14 **Not-for-profit entity** means an entity registered in the Not For Profit Registrar according to the Israeli Not For Profit Entity Law, 1980, or any organisation existing for any educational, research, promotion, training or any similar entity organised under the laws of any other jurisdiction, or a trade association which for the purposes of this policy shall mean a body of persons, whether incorporated or not, which is formed for the purpose of furthering the trade interests of its members, or of persons represented by its members.

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- 2.15 **Outside entity** means any associated company, or any not-for-profit entity or any other corporation, partnership, joint venture and any other organisation in which the *company* has a vested interest and is not considered a *subsidiary*. In addition, *outside entity* shall expressly include any other entity which may be listed by endorsement to this policy.
- 2.16 **Policyholder** means the organisation specified in the Schedule.
- 2.17 **Policy period** means the period of time from the inception date to the expiry date specified in the Schedule.
- 2.18 **Pollutants** include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) material to be recycled, reconditioned or reclaimed.
- 2.19 **Security** means any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security of the company, and shall include any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or purchase, voting trust certificate relating to, certificate of deposit for, or other interest in any of the foregoing.
- 2.20 **Single wrongful act** means a *wrongful act* and *wrongful act(s)* which are the same, related, continuous or which arise from a common nucleus of facts, or repeated *wrongful acts*, whether committed by the *insured* individually or by more than one *insured* and whether directed to or affecting one or more than one person or legal entity.
- 2.21 **Subsidiary** means companies in which the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*;
- (i) controls the composition of the board of directors; or
 - (ii) controls half or more of the voting power; or
 - (iii) holds half or more of the issued share capital.
 - (iv) has the right to appoint or fire the General Managing Director of the company.
- Cover for any *claim* against any of the directors, officers and employees of any subsidiary shall apply only for *wrongful act(s)* committed while such company is or was a *subsidiary* of the *policyholder*. However, upon written request by the *policyholder*, the insurer shall consider, after assessment and evaluation of the increased exposure, granting cover for *wrongful act(s)* committed prior to the acquisition of the subsidiary by the *policyholder*.
- 2.22 **Transaction** means any one of the following events:
- (i) The *policyholder* consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
 - (ii) Any person or entity, whether individually or together with any other person or persons, entity or entities acquires an amount of the outstanding shares representing more than 50 per cent of the voting power for the election of directors of the *policyholder*, or acquires the voting rights for such an amount of the shares.
- 2.23 **Wrongful act** any actual or alleged error, misstatement, misrepresentation, misleading statement, act, omission, neglect, breach of duty, breach of trust or breach of warranty of authority or misuse of authority, breach of contract, libel, slander, defamation, or other act of an *insured* in the discharge of their duties, individually or collectively, as well as their respective capacities as *Director or Officer* of any *Outside Entity* or any matter claimed against them solely by reason of their being *Directors and/or Officers* or employees acting in a managerial capacity on behalf of the *company* or of an *outside entity*.

For the avoidance of any doubt and without derogation from the generality of the above, with regard to Israel, but only to the extent that such definition does not derogate from the coverage granted by this policy, *wrongful act* shall also include the following:

- i. a breach of duty of care towards the *company* or any other person; It is agreed that the *insurer* undertakes that it shall not contend that a *wrongful act* was committed recklessly by any *insured* unless it can be proven that such recklessness attained a level equivalent to that of an act committed with actual deliberate intent.
 - ii. a breach of fiduciary duty towards the *company* provided that the *insured* acted in good faith and had reasonable grounds to believe that such act should not prejudice the interests of the *company*;
 - iii. financial obligations imposed on an *insured* in favour of a “third party”, in respect of any act performed by virtue of his position as a *Directors or Officers* or employees acting in a managerial capacity on behalf of the *company*.
- Iv Any *employment practice violation*.

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

* Sexual Harassment shall be covered in accordance with the legal constraints as the may be imposed from time to time by the Commissioner of Insurance or any equivalent regulator.

2.25 **Retaliation** means a *wrongful act* of an *insured* relating to or alleged to be in response to any of the following activities:

- (i) the disclosure or threat of disclosure by an employee to a superior or to any governmental agency or authority of any act by an *insured* which act is alleged to be a violation of the law, common or statutory, of any state, territory, jurisdiction or political subdivision thereof;
- (ii) the actual or attempted exercise by an employee of any right that such employee has under law, including rights under any law relating to employee rights; or
- (iii) any employee strike, work to rule or other similar action.

3. Exclusions

The *insurer* shall not be liable to make any payment for *loss* in connection with any *claim* made against the *insured*:

3.1 arising out of, based upon or attributable to:

- (i) the gaining in fact of any personal profit or advantage to which the *insured* was not legally entitled;
- (ii) profits in fact made from the purchase or sale by the insured of securities of the company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 (USA) and any amendments thereto or similar provisions of any state statutory law;
- (iii) the committing in fact of any dishonest or fraudulent act.

For the purpose of determining the applicability of these exclusions, the wrongful act of any insured shall not be imputed to any other insured. These exclusions shall only apply if it is

established through a judgment, or any other non-appealable final adjudication adverse to the insured, or any admission by an insured that the relevant conduct did in fact occur;

- 3.2 arising out of, based upon or attributable to the facts alleged or to the same or related wrongful act(s) alleged or contained in any claim which has been reported or in any circumstances of which notice has been given and accepted under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- 3.3 arising out of, based upon or attributable to any pending or prior litigation as of the pending and prior litigation continuity date specified in Item 6 (i) of the Schedule, or alleging or deriving from the same or essentially the same facts as alleged in the pending or prior litigation;
- 3.4 With regard to a *claim* brought or maintained within the jurisdiction of USA &/or Canada the following exclusion shall apply:
which are brought by or on behalf of any *insured* or the *company*; provided, however, that this exclusion **shall not apply** to:
- (i) any *employment practice claim* brought by any *insured* or the *company*;
 - (ii) any claim brought or maintained by an *insured* or the *company* for contribution or indemnity, if the *claim* directly results from another *claim* otherwise covered under this policy or which would have been covered under this policy had the *claim* been made directly against the said *insured*;
 - (iii) any derivative action brought or maintained on behalf of the *company* without the solicitation, voluntary assistance or participation of any *insured* or the *company*;
 - (iv) any *claim* brought or maintained by a liquidator, receiver or administrative receiver, trustee or any manager appointed by court of law or any official authority either directly or derivatively on behalf of the *company* without the solicitation, voluntary assistance or participation of any *insured*;
 - (v) any *claim* brought or maintained by any former *director or officer* or employee of the *company*.
 - (vi) *defence costs* and *claims* that are initiated as a result of order of public authorities or public supervisory bodies.
 - (viii) Claims that are the result of a "Third Party Complaint" issued by the *company*, or a *director or officer* following an action initiated by a third party against any of the above, for which the director or officer would have been legally liable had the said third party initiated the action against the said director or officer.
 - (ix) Any claim brought by or with the assistance of any employee of the company, protected as a whistle-blower under applicable law.
- 3.5 arising out of, based upon or attributable to or in any way involving, directly or indirectly, the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants, nuclear material or nuclear waste.
Provided, however, that this exclusion shall not apply to:
- (i) any *claim* made against the insured by any shareholder of the *company* either directly or derivatively, or
 - (ii) Defence costs, incurred by the insured in the defence of any other *claim*, provided that the total aggregate limit of liability for all loss that the *insurer* shall be liable to pay in respect of any *claim* or developments thereof for which cover is provided pursuant to this inclusion is specifically sub-limited to NIS 2,000,000. This amount being part of and not in addition to the total aggregate *limit of liability* specified in item 3 of the Schedule and in no way shall serve to increase the *insurer's limit of liability* specified therein.
 - (iii) unless on or before the pollution continuity date specified in Item 6 (ii) of the Schedule, the *company*, the *insured* or any employee of the company with managerial responsibilities over environmental affairs, control or compliance, knew or could have reasonably foreseen

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that there existed any situation, circumstance or wrongful act which could have given rise to a *claim* against the *company*, or the *insured*.

- 3.6 in a capacity as trustee or fiduciary under law (statutory or non-statutory including common) or administrator of any pension, profit sharing or employee benefits programme, including but not limited to an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or the Pensions Act 1995 (UK) and any amendments thereto or any similar provisions of the law, common or statutory, of any state, territory, jurisdiction, or political subdivision thereof; provided, however, that this exclusion shall not apply to *loss* arising from a *claim* for retaliation.
- 3.7 arising out of, based upon or attributable to any act or omission in the *insured's* capacity as a *director or officer* of any entity other than the *company*, or by reason of the *insured's* status as a *director or officer* of the other entity, other than as provided in Extension 4.3;
- 3.8 for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including loss of use thereof; provided, however, that any *claim* for emotional distress or deprivation of personal autonomy shall not be excluded with respect to an *employment practice claim* or any *claim* for libel or slander.

4. Extensions

Subject to all of the terms and conditions of this policy, cover is extended as follows:

4.1 Representation at Investigations and Examinations

(i) This policy shall provide cover for necessary fees, costs and expenses incurred with the written consent of the *insurer*, which shall not be unduly delayed or unreasonably withheld, resulting from any required attendance by *insured* at any official investigation, examination, inquiry, formal hearing, examination or other proceeding in relation to the affairs of the *company*.

If the *director or officer* of the *company* believes that as a result of such official investigation, examination, inquiry, formal hearing, examination or other similar proceeding, circumstances exist which may reasonably be expected to give rise to a *claim*, notice must be given to the *insurer* of the circumstances and the reasons for anticipating a claim, with particulars as to dates and persons involved in accordance with General provision 5.5.

4.2 New Subsidiaries

Cover under this policy is extended to any *subsidiary* which the *policyholder* acquires or creates after the inception date of this policy provided that the *subsidiary*:

- (i) has total gross assets which are less than the amount specified in Item 7 of the Schedule;
and
- (ii) is not domiciled, registered or in any way listed in United States of America or Canada;

If a newly acquired or created *subsidiary* fails to meet conditions (i) and (ii) above the *policyholder* may request an extension of this policy for such *subsidiary* provided that the *policyholder* shall give the *insurer* sufficient details to permit the *insurer* to assess and evaluate the *insurer's* potential increase in exposure. The *insurer* shall be entitled to amend the policy terms and conditions, during the policy period, including by the charging of a reasonable additional premium to reflect the increase in exposure.

Notwithstanding the above, if a newly created or acquired *subsidiary* fails to meet any of the above conditions an automatic coverage of 30 days shall be provided for such *subsidiary* commencing from the date of the acquisition or creation.

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

4.3 **Outside Directorships**

Cover includes *loss* arising from any *claim* made against any person (who for the purpose of this policy is deemed an *insured*) who was, is or may become, at the specific request or direction or nomination of the *company*, a *director or officer* trustee, governor or equivalent position of any *outside entity* (such person being deemed an *insured* for the purpose of this extension) for any *wrongful act* in the *insured's* capacity as a *director or officer* trustee, governor or equivalent position of the *outside entity*.

This cover shall be specifically excess of any insurance in force in respect of the outside entity as well as any indemnification provided by the outside entity.

4.4 **Discovery Period**

If the *policyholder* or the *insurer* refuses to renew this policy, then the *policyholder* shall have the right, upon payment of an additional premium to a *discovery period* of one of the following options:

- 60 per cent of the full *annual premium* for a discovery period of 12 months, or
- 120 per cent of the full *annual premium* for a discovery period of 36 months, or
- 210 per cent of the full *annual premium* for a discovery period of 84 months;

following the effective date of non-renewal.

The *insured* shall be entitled to a 90 day discovery period at no additional premium if this policy is not renewed. If the *policyholder* elects to purchase a discovery period, this 90-day discovery period shall be part of and not in addition to the purchased discovery period.

To purchase the discovery period, the *policyholder* must request its purchase in writing within 45 days of the termination date of the policy and must tender the additional premium within 60 days of the termination date.

The additional premium is not refundable and the discovery period is not cancellable.

If a *transaction* takes place, then the *policyholder* shall not have the right to purchase a *discovery period* as set out above. However, the *policyholder* shall have the right within 60 days of the end of the *policy period* to request an offer from the *insurer* of a *discovery period* for up to 84 months. The *insurer* shall offer a discovery period with similar terms, conditions and premium *mutatis mutandis* of the current policy.

4.5 **Heirs, Estates and Legal Representatives**

If an insured dies, becomes incompetent, ill or patient for any purpose of any statute relating to mental health, insolvent or bankrupt, this policy shall cover loss arising from any claim made against the estate, heirs, or legal representatives of the insured for any wrongful act of such insured.

4.6 **Joint Property Liability**

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

4.7 Former Directors and Officers

If the *policyholder* does not renew or replace this policy with any other policy affording directors and officers liability and a *discovery period* is not elected under Extension 4.4 above, a *discovery period* of 84 months after the date of such non-renewal will be provided under this policy during which time written notice may be given to the *insurer* of any *claim* first made against any *director, officer* or employee in a supervisory role or managerial capacity of the *company* who ended office or seceded before the date of non-renewal and which *claim* is otherwise covered by this policy.

4.8 Emergency Costs

If the *insurer's* written consent cannot reasonably be obtained before *defence costs* are incurred with respect to any *claim*, or costs are incurred with respect to a *crisis loss*, then *the insurer* shall give retrospective approval for such costs up to, in the aggregate, for an amount of 10% of the limit of liability.

4.9 Public Relations Expenses

The *insurer* shall pay up to the amount of NIS 1,000,000 for the reasonable fees, costs and expenses incurred by any *insured* for *public relations services* in connection with a covered *claim* or investigation or examination.

4.10 Risk Management Extension

The insured shall be entitled to request advice upon giving notice of any circumstances which in their opinion might subsequently give rise to a *claim* for which coverage would apply, as to their legal position and any steps which may be appropriate to avert or minimize the risk of such *claim*. The *insurer agrees to bear the cost* of obtaining advice in relation to any such circumstances up to a limit of NIS 200,000 per *director or officer* any one request and in the aggregate and NIS1,000,000 in the aggregate for all requests made under this provision. Any costs borne by *insurer* under this provision shall be paid separately from any payment which may become due hereunder upon a claim being made in respect of such circumstances and *insurer* retain the right to reasonably disapprove any lawyers or advisors from whom advice is to be taken. This extension is not subject to any retention.

5. General provisions

5.1 Representation and severability

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

The proposal form shall be construed as a separate proposal by each of the *insured*. With respect to statements and particulars in the proposal, no statements made or knowledge possessed by any *insured* shall be imputed to any other *insured* to determine whether cover is available for any *claim* made against such other *insured*.

Furthermore, it is agreed that the breach of any of the policy terms or conditions or the fact that cover under the policy will not be granted to any of the *insured* shall not derogate in any way from any right of other *insureds* for indemnity.

5.2 Changes in Risk During Policy Period

(i) If during the *policy period* a *transaction* takes place, then the cover provided under this policy is amended to apply only to *wrongful act(s)* committed prior to the effective date of the *transaction*.

(ii) If during the policy period, the *company* decides to make an initial public offering (IPO) of its shares in any jurisdiction, then as soon as the information is publicly available, the company shall provide the *insurer* with any prospectus or offering statement for the *insurer's* evaluation and assessment of the increased exposure of the insured and the *insurer* shall be entitled to

amend the terms and conditions of this policy and/or charge a reasonable additional premium reflecting the increase in exposure.

At the *policyholder's* request, prior to the public announcement of such initial public offering, the *insurer* shall evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this policy and additional premium.

In this event and at the request of the *policyholder*, the *insurer* will enter into a confidentiality agreement with the *policyholder* relating to any information provided regarding the proposed initial public offering.

5.3 **Limit of Liability**

The limit of liability specified in Item 3 of the Schedule is the total aggregate limit of the *insurer's* liability for all *loss*, arising out of all *claims* made against all *insureds* under all insurance covers under this policy combined. The limit of liability for the *discovery period* shall be part of and not in addition to the total aggregate limit of liability for the *policy period*. *Loss* arising from any *claim* which is made subsequent to the *policy period* or *discovery period* which pursuant to General provision 5.5 is considered made during the *policy period* or *discovery period* shall also be subject to the same total aggregate limit of liability. *Defence costs* are not payable by the *insurer* in addition to the total aggregate limit of liability. *Defence costs* are part of *loss* and are subject to the total aggregate limit of liability for *loss*.

Notwithstanding the above, it is agreed that in the event of a *loss*, including *defence costs*, exceeding the total aggregate limit of liability for *loss*, then this policy shall cover additional *defence costs* up to an amount that represents "reasonable legal costs" for the purpose of article 66 of the Insurance Contract Law, 5741-1981.

5.4 **Retention**

The *insurer* shall only be liable for the amount of *loss* arising from a *claim* which is in excess of the retention amount specified in Item 4 of the Schedule with regard to all *loss* under all insurance covers under this policy for which the *company* has indemnified or is permitted or required to indemnify the *insured*. The retention amount is to be borne by the *company*. In the event that *company* is able to indemnify the *insured* but does not, the *insurer* shall advance to the *insured* the amount of *loss* within the *retention*. Under these circumstances, and upon notice by the *insurer*, the amount of the retention shall be immediately payable to the *insurer* by the *company*.

A single retention amount shall apply to *loss* arising from all *claims* alleging a *single wrongful act*. Provided, however, that no retention shall apply and the *insurer* shall thereupon reimburse any *defence costs* paid by the *company*, in the event of:

- (i) a determination of *no liability* of all *insureds*, or
- (ii) a dismissal or a stipulation to dismiss the *claim* without prejudice and without the payment of any consideration by any *insured*.

Provided, however, that in the case of (ii) above, such reimbursement shall occur 90 days after the date of dismissal or stipulation as long as the *claim* is not re-brought (or any other *claim* which is subject to the same single retention by virtue of this General provision 5.4 is not brought) within that time, and further subject to an undertaking by the *company* in a form acceptable to the *insurer* that such reimbursement shall be paid back by the *company* to the *insurer* in the event the *claim* (or any other *claim* which is subject to the same single retention by virtue of this General provision 5.4) is brought after such 90 day period.

5.5 **How to Give Notice and Report a Claim**

- (i) Notice of a *claim* or of circumstances which may result in a *claim* shall be given in writing to the **broker of record by whom this policy was placed**. If posted the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.
- (ii) The *company* or the *insured* shall, give written notice to the *insurer* of any *claim* made against an *insured* as soon as practicable and either:

- (a) any time during the *policy period* or during the *discovery period*;
or
- (b) within 90 days after the end of the *policy period* or the *discovery period*, as long as such *claim(s)* is reported no later than 90 days after the date such *claim* was first made known to an *insured*.
- (iii) If, during the *policy period* or during the *discovery period* written notice of a *claim* against an *insured* has been given to the *insurer* pursuant to the terms and conditions of this policy, then any *claim* arising out of, based upon or attributable to the facts alleged in the *claim* previously notified to the *insurer* or alleging a *single wrongful act* which is the same as or related to any *wrongful act* alleged in the previously notified *claim*, shall be considered made against the *insured* and reported to the *insurer* at the time the first notice was given.
- (iv) If during the *policy period* or during the *discovery period*, the *company* or the *insured* shall become aware of any circumstances which may reasonably be expected to give rise to a *claim* being made against an *insured* and shall give written notice to the *insurer* of the circumstances and the reasons for anticipating a *claim*, with known particulars as to dates and persons involved, then any *claim* which is subsequently made against an *insured* and reported to the *insurer* arising out of, based upon or attributable to the circumstances or alleging any *wrongful act* which is the same as or related to any *wrongful act* alleged or contained in those circumstances, shall be considered made against the *insured* and reported to the *insurer* at the time the notice of the circumstances was first given.

5.6 Advancement of Costs

The *insurer* shall advance to the *insured* or the *company* defence costs under all insurance covers under this policy before the final disposition of the *claim*. Payments of defence costs shall not be unreasonably withheld or unduly delayed and paid on a current basis.

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

In the event and to the extent that the *company* is permitted or required to indemnify the *insured* but for whatever reason fails to do so, 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.

In the event that the *insured*, is found guilty of a criminal act and only subject to that the criminal act is being of an "absolute liability" nature (meaning, no intention is needed, in order to validate the act) the *insurer* will pay reasonable defence costs which will not exceed NIS 100,000 in respect of each *loss* and in the aggregate for the *policy period*.

5.7 How Defence Will Be Conducted

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

The *insured* shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any defence costs without the prior written consent of the *insurer*.

Only those settlements, stipulated judgments and defence costs which have been consented to by the *insurer* shall be recoverable as *loss* under the terms of this policy. The *insurer's* consent shall not be unreasonably withheld or unduly delayed, provided that the *insurer* shall be entitled to effectively associate in the defence and the negotiation of any settlement of any *claim* in order to reach a decision as to reasonableness.

The *company* and the *insured* shall give the *insurer* full co-operation and all information as it may reasonably require. In the event that a dispute arises between the *insurer* and the *insured* regarding whether or not to contest any legal proceedings, neither the *insured* nor the *company* shall be required to contest any legal proceedings unless a Senior Israel Bar Counsel or equivalent

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(to be mutually agreed by the *policyholder* and the *insurer*) shall advise that the proceedings should be contested. The cost of the Counsel shall be borne by the *insurer*.

5.8 Allocation

- (i) The *insurer* has no obligation under this policy for *defence costs* incurred by the *company* unless covered by a specific extension, or any judgments rendered against or settlements by the *company*, or any obligation to pay *loss* arising out of any legal liability that the *company* has to the third party claimant. Accordingly, with respect to:
 - (a) *defence* costs jointly incurred by;
 - (b) any joint settlement made by; and/or
 - (c) any adjudicated judgment of joint and several liability rendered against the *company* and any *insured*, the *company* and the *insured* and the *insurer* agree to use their best efforts to determine a fair and proper allocation of the amounts as between the *company* and the *insured* and the *insurer*, taking into account the relative legal and financial exposures of and the relative benefits obtained by the *insured* and the *company*.
- (ii) In the event that any *claim* involves both covered matters and matters not covered under this policy, a fair and proper allocation of any *defence costs*, judgments and/or settlements shall be made between the *company*, the *insured* and the *insurer* taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.
- (iii) In the event that a determination as to the amount of *defence costs* to be advanced to the *insured* under this policy cannot be agreed to, then the *insurer* shall advance full *defence costs* until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law. In the absence of agreement, such allocation is determined by a member of the Bar Council or local equivalent to be mutually agreed upon by the *insurer* and the *directors and officers* or in default of such agreement to be nominated by the Chairman of the Bar Council or local equivalent, such determination will be based upon the written submissions of the *insurer* and the *directors and officers* and will be final and binding.

5.9 Non Cancellation Clause

It is hereby expressly agreed that this policy may neither be cancelled by the *policyholder* nor by the *insurer* at any time during the *policy period* or during the *discovery period* if exercised except in accordance with article 15 of the Insurance Contract Law 5741 - 1981, in the event of failure to pay the premium as agreed.

5.10 Subrogation

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

In no event, however, shall the *insurer* exercise its right of subrogation against an *insured* under this policy unless such *insured* has been convicted of a deliberate criminal act, or been determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such *insured* was not legally entitled.

5.11 Other Insurance

Any insurance as is provided under this policy shall apply only as excess over any other same valid and collectible insurance.

5.12 Notice and Authority

It is agreed that the *policyholder* shall act on behalf of its *subsidiaries* and all *insureds* with respect to the giving and receiving of notice under this policy, including the giving of notice of *claim*, the

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payment of premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to a *discovery period*.

5.13 Assignment

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

5.14 Jurisdiction and Governing Law

Any interpretation of this policy relating to its construction, validity or operation shall be made solely in accordance with the laws of the State of Israel. Including but not limited, to the Insurance Contract Law 5741-1981, except as amended herein.

The parties agree to submit to the exclusive jurisdiction of the courts in the State of Israel (Tel Aviv or Jerusalem), however, for the avoidance of any doubt, it is agreed that the liability of the insured shall be determined in accordance with the applicable law of the jurisdiction wherein the *claim* arises or is filed.

5.15 Plurals and Titles

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