



Policy

Angel Cyber Liability

December 2018
CYB 12/18 ANG.3



Table of Contents

1	Introduction and Important Information.....	3
2	General Definitions	8
3	Insuring Clauses	13
4	General Exclusions	15
5	General Conditions	20



1 Introduction and Important Information

This **Policy** is a contract between **You** and **Us**. It is arranged through **Angel** on **Our** behalf.

This **Policy** consists of this document, the **Schedule** and **Endorsements**, if any, all of which are a single document and are to be read as one contract. In this **Policy**, certain words or phrases are specially defined. In deciding to accept this **Policy** and in setting the terms and Premium **We** have relied on the information which **You** have provided to **Us**.

We will, in consideration of the payment of the Premium, insure **You**, subject to the terms and conditions of this **Policy** for the **Period of Insurance** or any subsequent period for which **We** agree to accept payment of Premium.

Please read this **Policy** carefully and make sure that it meets **Your** needs. If any corrections are necessary **You** should contact **Angel** through whom this **Policy** was arranged.

Please keep this **Policy** in a safe place – **You** may need to refer to it if **You** have to make a **Claim**.

1.1 Accessibility

Upon request **Angel** can provide Braille, audio or large print versions of the **Policy** and the associated documentation including the Key Facts document. If **You** require an alternative format **You** should contact **Your Broker** through whom this **Policy** was arranged.

1.2 Fair Processing Notice

This Privacy Notice describes how XL Catlin Insurance Company UK Limited (together, “**We**”, “**Us**” or the “**Insurer**”) collect and use the personal information of insureds, Claimants and other parties (“**You**”) when we are providing our insurance and reinsurance services.

The information provided to the **Insurer**, together with medical and any other information obtained from **You** or from other parties about **You** in connection with this **Policy**, will be used by the **Insurer** for the purposes of determining **Your** application, the operation of insurance (which includes the process of underwriting, administration, Claims management, analytics relevant to insurance, rehabilitation and customer concerns handling) and fraud prevention and detection. **We** may be required by law to collect certain personal information about **You**, or as a consequence of any contractual relationship **We** have with **You**. Failure to provide this information may prevent or delay the fulfilment of these obligations.

Information will be shared by the **Insurer** for these purposes with group companies and third party insurers, reinsurers, insurance intermediaries and service providers. Such parties may become data controllers in respect of **Your** personal information. Because **We** operate as part of a global business, **We** may transfer **Your** personal information outside the European Economic Area for these purposes.

You have certain rights regarding **Your** personal information, subject to local law. These include the rights to request access, rectification, erasure, restriction, objection and receipt of **Your** personal information in a usable electronic format and to transmit it to a third party (right to portability).

If **You** have questions or concerns regarding the way in which **Your** personal information has been used, please contact: compliance@axaxl.com

We are committed to working with **You** to obtain a fair resolution of any complaint or concern about privacy. If, however, **You** believe that we have not been able to assist with **Your** complaint or concern, **You** have the right to make a complaint to the UK Information Commissioner's Office.



For more information about how we process **Your** personal information, please see our full privacy notice at: <http://axaxl.com/privacy-and-cookies>.

1.3 **Information You Have Given Us**

In deciding to accept this **Policy** and in setting the terms including premium **We** have relied on the information which **You** have provided to **Us**. **You** must take care when answering any questions **We** ask by ensuring that any information provided is accurate and complete.

If **We** establish that **You** deliberately or recklessly provided **Us** with untrue or misleading information **We** will have the right to:

- (a) treat this **Policy** as if it never existed;
- (b) decline all **Claims**; and
- (c) retain the premium.

If **We** establish that **You** carelessly provided **Us** with untrue or misleading information **We** will have the right to:

- (i) treat this **Policy** as if it never existed, refuse to pay any **Claim** and return the premium **You** have paid, if **We** would not have provided **You** with cover;
- (ii) treat this **Policy** as if it had been entered into on different terms from those agreed, if **We** would have provided **You** with cover on different terms;
- (iii) reduce the amount **We** pay on any **Claim** in the proportion that the premium **You** have paid bears to the premium **We** would have charged **You**, if **We** would have charged **You** more.

We will notify **You** in writing if (i), (ii) and/or (iii) apply.

If there is no outstanding **Claim** and (ii) and/or (iii) apply, **We** will have the right to:

- (1) give **You** notice that **We** are terminating this **Policy**; or
- (2) give **You** notice that **We** will treat this **Policy** and any future **Claim** in accordance with (ii) and/or (iii), in which case **You** may then give **Us** notice that **You** are terminating this **Policy**;

in accordance with the Cancellation and Cooling-Off Period Provisions.

1.4 **Fraud**

If **You**, or anyone acting for **You**, makes a fraudulent **Claim**, for example a **Loss** which is fraudulently caused and/or exaggerated and/or supported by a fraudulent statement or other device, **We**:

- (a) will not be liable to pay the **Claim**; and
- (b) may recover from **You** any sums paid by **Us** to **You** in respect of the **Claim**; and
- (c) may by notice to **You** treat this **Policy** as having been terminated with effect from the time of the fraudulent act.



If **We** exercise **Our** right under (c) above:

- (i) **We** shall not be liable to **You** in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to **Our** liability under this **Policy** (such as the occurrence of a **Loss**, the making of a **Claim**, or the notification of a potential **Claim**); and.
- (ii) **We** need not return any of the premium paid.

1.5 **Change in Circumstances**

You must tell **Us** as soon as practicably possible of any change in the information **You** have provided to **Us** which happens before or during any **Period of Insurance**.

When **We** are notified of a change **We** will tell **You** if this affects **Your Policy**. For example **We** may cancel **Your Policy** in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of **Your Policy** or require **You** to pay more for **Your** insurance. If **You** do not inform **Us** about a change it may affect any **Claim You** make or could result in **Your** insurance being invalid.

1.6 **Sanctions**

We shall not provide any benefit under this **Policy** to the extent of providing cover, payment of any **Claim** or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

1.7 **Cancellation and Cooling-Off Period**

(a) **Your Right to Cancel during the Cooling-Off Period**

You are entitled to cancel this **Policy** by notifying **Us** in writing, by email or by telephone within fourteen (14) days of either:

- (i) the date **You** receive this **Policy**; or
- (ii) the start of **Your Period of Insurance**;

whichever is the later.

A full refund of any premium paid will be made unless **You** have made a **Claim** in which case the full annual premium is due.

(b) **Your Right to Cancel after the Cooling-Off Period**

You are entitled to cancel this **Policy** after the cooling-off period by notifying **Us** in writing, by email or by telephone. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the **Policy** has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

(c) **Our Right to Cancel**

We are entitled to cancel this **Policy**, if there is a valid reason to do so, including for example:

- (i) any failure by **You** to pay the premium; or
- (ii) a change in risk which means **We** can no longer provide **You** with insurance cover; or



(iii) non-cooperation or failure to supply any information or documentation **We** request, such as details of a **Claim**;

by giving **You** fourteen (14) days' notice in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the **Policy** has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

1.8 **Choice of Law**

The parties are free to choose the law applicable to this **Policy**. Unless specifically agreed to the contrary this **Policy** will be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales.

The language of this **Policy** and all communications relating to it will be in English.

1.9 **Third Party Rights**

A person who is not a party to this contract of insurance has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract of insurance but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

1.10 **How to make a Complaint**

We are dedicated to providing a high quality service and **We** want to ensure that **We** maintain this at all times.

If **You** have any questions or concerns about the policy or the handling of a **Claim** please contact **Your** broker through whom this policy was arranged.

If **You** wish to make a complaint **You** can do so at any time by referring the matter to:

Complaints Department
XL Catlin Services SE
20 Gracechurch Street
London
EC3V 0BG

Telephone Number: +44 (0)20 7743 8487
E-mail: axaxlukcomplaints@axaxl.com

XL Catlin Services SE acts on **Our** behalf in the administration of complaints.

If **You** remain dissatisfied after the Complaints Department has considered **Your** complaint, or **You** have not received a final decision within eight (8) weeks, **You** can refer **Your** complaint to the Financial Ombudsman Service at:

Exchange Tower
London
E14 9SR

E-mail: complaint.info@financial-ombudsman.org.uk



From within the United Kingdom

Telephone Number: 0800 0234 567 calls to this number are free on mobiles and landlines
Telephone Number: 0300 1239 123 calls to this number costs no more than calls to 01 and 02 numbers

From outside the United Kingdom

Telephone Number: +44(0)20 7964 0500
Fax Number: +44(0)20 7964 1001
Text Number: 07860 027 586 Call Back Service

The Financial Ombudsman Service can look into most complaints from consumers and small businesses. For more information contact them on the above number or address, or view their website: www.financial-ombudsman.org.uk

The European Commission also provides an on-line dispute resolution (ODR) platform that allows consumers to submit their complaint through a central site, which will forward the complaint to the right Alternative Dispute Resolution (ADR) scheme. The ADR scheme for XL Catlin Insurance Company UK Limited is the Financial Ombudsman Service, which can be contacted directly using the contact details above. For more information about ODR please visit <http://ec.europa.eu/odr>.

1.11 Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if **We** are unable to meet **Our** obligations under this **Policy**. If **You** are entitled to compensation under the Scheme, the level and extent of the compensation will depend on the nature of this **Policy**. Further information about the Scheme is available from the Financial Services Compensation Scheme (PO Box 300, Mitcheldean, GL17 1DY) and on their website: www.fscs.org.uk.

1.12 Regulatory Information

(a) XL Catlin Insurance Company UK Limited

Are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 423308). Further details can be found on the Financial Services Register at www.fca.org.uk

Registered Office 20 Gracechurch Street, London, EC3V 0BG.
Registered in England - Company Number 5328622.

(b) Angel Risk Management

Angel Risk Management Limited are authorised and regulated by the Financial Conduct Authority (Firm Reference No. 718451).

Registered office: 3rd Floor, 1 Legg Street, Chelmsford, Essex, CM1 1JS. Registered in England No. 2942487.

You can check this out on the FCA's website at www.fca.org.uk which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.



2 General Definitions

Certain words within this **Policy** have a special meaning. The following words will have a special meaning where stated in bold with a capital letter throughout the **Policy**.

- 2.1 **Angel** means Angel Risk Management Limited.
- 2.2 **Aggregate Limit of Liability** means the maximum amount that **We** will pay under this **Policy** as specified in the **Schedule**.
- 2.3 **Bodily Injury** means physical injury or illness of any person (including death sustained as a result of such), mental anguish or emotional distress..
- 2.4 **Business Trend** means **Your** trend, variations and circumstances either before or after the **Network Compromise** which would have affected **You** had the **Network Compromise** not occurred, so that the adjusted **Loss of Profit** will represent as closely as practicable the results which except for the **Network Compromise**, would have been obtained during the **Period of Restoration**.
- 2.5 **Change of Control** means any one or more of the following events:
- (a) the sale, merger or change in control of **Your** business;
 - (b) material change in **Your** business;
 - (c) the appointment of a receiver, liquidator, administrator or trustee in bankruptcy for **Your** business;
 - (d) any process whereby **You** become a **Subsidiary** of another previous unaffiliated entity, or become controlled by another previously unaffiliated entity by virtue of any law.
- 2.6 **Claim** means
- (a) a written demand for monetary or non-monetary relief arising from a **Wrongful Act**; or
 - (b) a written communication alleging a **Wrongful Act**; or
 - (c) any action alleging a **Wrongful Act** in a court of law or in arbitration; or
 - (d) with respect to insuring clause 3.6 only, a **Regulatory Investigation**.
- 2.7 **Computer System** means a system of computer hardware, software, and associated electronic devices that is controlled, operated or owned by **You**.
- 2.8 **Confidential Business Information** means any non-public third party business information that cannot be lawfully obtained or known by the general public, including trade secrets, customers lists, drawings, financial information and marketing plans that are provided to **You** by a third party.
- 2.9 **Data Breach** means the unauthorised gaining of access to data, which a **Responsible Person** first becomes aware of during the **Period of Insurance**, that compromises the security, confidentiality and/or integrity of **Personal Data** or **Confidential Business Information** held by **You**.
- 2.10 **Data Breach Reporting Requirement** means a provision in a law, statute or regulation that requires **You** to provide notification to affected persons of a breach of such person's **Personal Data**.



- 2.11 **Defence Costs** means reasonable legal fees and expenses incurred with **Our** prior written consent in the defence of any **Claim** or **Regulatory Investigation** which is covered under this **Policy**.
- 2.12 **Denial of Service** means an attack implemented over a network or the internet intended to disrupt the normal operations of a **Computer System**, and to render that system inaccessible to authorised users.
- 2.13 **Discovery Period** means a period immediately following expiry of the **Period of Insurance** during which written notice may be given to **Us** of a **Claim** first made during such period or the **Period of Insurance**, for an act, error or omission committed before expiry of the **Period of Insurance**.
- 2.14 **Electronic Data** means information in electronic form, including but not limited to computer programs.
- 2.15 **Endorsement** means a change in the terms and conditions of this **Policy** agreed by **Us** that may extend or restrict cover.
- 2.16 **Excess** means the amount stated in the **Schedule** of each and every **Claim** that **You** must pay before **We** make any payment under this **Policy**.
- 2.17 **Extortion Demand** means any sums unlawfully demanded from **You** by a third party.
- 2.18 **First Party Event** means **Network Compromise**, **Data Breach** and **Extortion Demand** that triggers coverage under any of the insuring clauses 3.3 to 3.8.
- 2.19 **Limit of Liability** means the relevant amount specified for a given insuring clause stated in the **Schedule**.
- 2.20 **Loss** means:
- (a) damages, judgments, settlements or other amounts that **You** are legally obliged to pay to a third party as a result of a **Claim** which is covered under this **Policy**; and
 - (b) **Defence Costs**.
- Loss** does not include:
- (i) punitive, aggravated, or exemplary damages or the multiplied portion of any damages award; or
 - (ii) **Your** salaries, benefits, fees, commission, bonuses, overheads, charges or expenses.
 - (iii) contractual penalties, service credits, liquidated damages (but only to the extent that such liquidated damages exceed the amount for which **You** would have been liable in the absence of such liquidated damages clause) and as not otherwise excluded by 4.4;
 - (iv) civil or criminal fines or penalties which are uninsurable under the law governing this **Policy**.
 - (v) taxes incurred by any person or entity.
 - (vi) **Your** costs or expenses of complying with any injunctive relief or any form of equitable relief;
 - (vii) the monetary value of any electronic fund transfer or transactions which is lost or diminished during transfer.



- 2.21 **Loss of Profit** means an amount of profit, net of taxes which would have been applied to such profit had such profit been earned, which is the amount by which A exceeds B. For the purpose of this calculation:
- (a) means gross profit net of taxes that would have been earned during the **Period of Restoration** adjusted for **Business Trend** based upon the gross profit earned during the two (2) years prior to the **Network Compromise**;
 - (b) means actual gross profit during the **Period of Restoration** plus variable costs saved as a result of the **Period of Restoration**.
- 2.22 **Malware** means any unauthorised, malicious, corrupting or harmful code which has inserted itself or been inserted into a **Computer System**.
- 2.23 **Media Activities** means the publishing, transmission, display, broadcast, web cast, dissemination, distribution or release of information over the internet by or on **Your** behalf.
- 2.24 **Network Compromise** means any **Unauthorised Access** to, use or misuse of, or modification to **Your Computer System**, and/or denial of **Computer System** resources by attacks perpetuated through **Malware**, viruses, worms, and Trojan horses, spyware, zero-day attacks, hacker attacks and **Denial of Service** attacks.
- 2.25 **Official Entity** means any regulator, government, government body, governmental or administrative agency, any self-regulatory body, recognised in that capacity under applicable law, or official trade body.
- 2.26 **Operational Expenses** means the costs of renting additional IT equipment and other additional services, incurred in order to minimise the **Loss of Profit** caused by a **Network Compromise**.
- 2.27 **Period of Insurance** means the period stated on the **Schedule** for which **We** have agreed to cover **You**.
- 2.28 **Period of Restoration** means the period that begins when there has been an interruption or suspension (whether partial or full) of the **Computer System** which is caused by a **Network Compromise**, and ends on the date that such interruption or suspension ends. The **Period of Restoration** will not in any event exceed ninety (90) days.
- 2.29 **Personal Data** means data which relates to a living individual who can be identified from such data.
- 2.30 **Personal Injury** means injury, other than **Bodily Injury**, to a third party arising out of one or more of the following offences by **You** arising out of **Media Activities**:
- (a) libel, slander, or other defamatory or disparaging statements or materials;
 - (b) oral or written publication of material that breaches an individual's right of privacy;
 - (c) plagiarism, piracy or misappropriation of ideas or style of doing business; and
 - (d) infringement or misappropriation of copyright, title, slogan, trademark, trade name, trade dress, logo, service mark or service name.
- 2.31 **Policy** means this document, the **Schedule** and any applicable **Endorsements**.



2.32

Privacy and Security Breach Wrongful Act means:

- (a) failure to reasonably protect **Personal Data** or **Confidential Business Information**;
- (b) violation of any law, statute, regulation governing the authenticity, availability, confidentiality, storage, control, disclosure, or use of **Personal Data**;
- (c) violation of a **Data Breach Reporting Requirement**;
- (d) negligence resulting in a failure to prevent a **Network Compromise** that results in:
 - (i) the ability of an unauthorised third party user to gain access to **Your Computer System**;
 - (ii) the malicious addition, alteration, copy, destruction, deletion, disclosure, damage, removal or theft of data residing on **Your Computer System**;
 - (iii) a **Denial of Service** attack emanating from **Your Computer System** which damages, destroys third party hardware, computer programs or **Electronic Data** residing on a third party's network; or
 - (iv) the transmission of **Malware** from **Your Computer System** to a third party.

2.33

Privacy Notification and Crisis Management Costs means the costs of:

- (a) determining the actions necessary to respond to comply with legislation following a **Data Breach**;
- (b) notifying individuals of a **Data Breach** who are required to be notified pursuant to any legislation;
- (c) performing computer forensics to determine the existence, cause, and scope of a **Network Compromise** or **Data Breach**;
- (d) voluntarily notifying individuals of a **Data Breach** who may not be required to be notified under the applicable legislation;
- (e) operating a call centre to manage inquiries from individuals affected by the **Data Breach**;
- (f) providing credit or identity monitoring and identity protection for those individuals whose **Personal Data** was or may have been breached;
- (g) hiring a public relations or crisis communications firm solely in order to minimise harm to **Your** reputation.

2.34

Publication Breach means the publication of information from or via media owned or controlled by **You**, that is unlawful or is defamatory, a violation of a person's rights of privacy, or infringes third party intellectual property rights.

2.35

Regulatory Fine means an insurable fine or civil monetary penalty imposed by a governmental or regulatory authority for a **Data Breach**.



- 2.36 **Regulatory Investigation** means an actual or threatened investigation in writing by a regulator or governmental authority into an actual or alleged **Privacy and Security Breach Wrongful Act** caused by **You** or **Your Sub-Contractor** that may result in the imposition of a **Regulatory Fine** on **You**.
- 2.37 **Retroactive Date** means the date stated in the **Schedule**.
- 2.38 **Responsible Person** means any Executive Director, Chief Information Officer, Chief Security Officer, Chief Technology Officer, Head of Legal, Compliance Officer, Head of Audit, Risk Manager or Insurance Manager (or equivalent position of any of the foregoing).
- 2.39 **Schedule** means the document entitled **Schedule**, which attaches to and forms part of this **Policy**.
- 2.40 **Sub-Contractors** means independent consultants or Sub-Contractors who provide services on **Your** behalf under a written contract.
- 2.41 **Subsidiary** means any entity, other than an investment vehicle, in which **You** either directly or indirectly through one or more entities:
- (a) control the composition of the board of directors;
 - (b) control more than half of the shareholder voting power; or
 - (c) hold more than half of the issued share capital.
- on or before the inception date of this **Policy**.
- 2.42 **Time Excess** means the period stated in the **Schedule** that must pass after the start of the **Period of Restoration**, before **We** become liable for any **Loss of Profit** or **Operational Expenses**.
- 2.43 **Unauthorised Access** means the gaining of access to a **Computer System** by a person or persons not authorised by **You** to do so.
- 2.44 **We/ Us/ Our** means XL Catlin Insurance Company UK Limited.
- 2.45 **Wrongful Act** means:
- (a) in relation to insuring clause 3.1, any of the acts, errors or omissions referred to in clauses (a) to (f);
 - (b) a **Privacy and Security Breach Wrongful Act**.
- 2.46 **You/ Your** means the person or entity stated in the **Schedule** as insured.



3 Insuring Clauses

Third Party Insuring Clauses

We will provide coverage under these insuring clauses in excess of the **Excess** and up to the **Limit of Liability**.

3.1 Multimedia internet Liability

We will pay on **Your** behalf all **Loss** that **You** become legally obligated to pay as a result of a **Claim**, first made against **You** during the **Period of Insurance**, arising out of the performance of **Media Activities** by **You** or **Your Sub-Contractors** where the **Claim** is for:

- (a) negligence or breach of duty to use reasonable skill and care; or
- (b) negligent misrepresentation or negligent misstatement; or
- (c) libel, slander, defamation, product disparagement or trade libel (malicious falsehood); or
- (d) infringement of copyright, or domain name, or the dilution or infringement of any trademark, service mark, service name or trade name; or
- (e) plagiarism or piracy; or
- (f) breach of confidence or misuse of information.

3.2 Security and Privacy Liability

We will pay on **Your** behalf all **Loss** that **You** become legally obligated to pay as a result of a **Claim**, first made in writing against **You** during the **Period of Insurance**, arising out of a **Privacy and Security Breach Wrongful Act** by **You** or **Your Sub-Contractors**.

First Party Insuring Clauses

We will provide coverage under these insuring clauses in **Excess** of the **Excess** and up to the **Limit of Liability**. Nothing in the following insuring clauses shall increase the **Aggregate Limit of Liability**.

3.3 Privacy Notification and Crisis Management Costs

We will reimburse the **Privacy Notification and Crisis Management Costs** that **You** incur with prior written consent from **Us**, following a **Data Breach** which is first discovered during the **Period of Insurance**, up to the **Limit of Liability** stated in the **Schedule**.

3.4 Emergency Response Costs

Where it has not been practicable to seek **Our** prior written consent to incur expense referred to in Clause 3.3 above, **We** will reimburse **You** for such expense in respect of emergency payments up to the relevant **Limit of Liability** stated in the **Schedule**.



3.5 **Extortion Demands**

We will reimburse **You** for sums paid in response to an **Extortion Demand** up to the **Limit of Liability** stated in the **Schedule** and first made against **You** during the **Period of Insurance**, by a third party which has committed or credibly threatens to commit a **Network Compromise** or a **Data Breach** provided that prior to the delivery of transfer of funds, **You** after receiving such threat:

- (a) have reported the extortionist's demand to the police or local law enforcement authorities; and
- (b) had a reasonable belief that such threat was credible, could cause **Loss** to **You**, and was technologically feasible at the time made.

3.6 **Regulatory Investigations**

We will pay **Defence Costs** and **Regulatory Fines** (where insurable) up to the relevant **Limit of Liability** stated in the **Schedule**, arising from a **Regulatory Investigation**, but only where **You** were first made aware during the **Period of Insurance** of the intention to hold such **Regulatory Investigation**.

3.7 **Business Interruption**

We will reimburse **You** for **Loss of Profit** and/or **Operational Expenses**, up to the **Limit of Liability** stated in the **Schedule**, during the **Period of Restoration** directly caused by a **Network Compromise** to the **Computer System** which was first discovered during the **Period of Insurance**.

3.8 **Loss of Electronic Data**

We will reimburse **You** for the following costs and expenses, necessarily incurred with **Our** prior written consent in respect of a **Network Compromise** which was first discovered during the **Period of Insurance**.

- (a) costs of replacing, updating or restoring **Your Electronic Data** which has been destroyed, lost damaged, or altered during a **Network Compromise** from backups, but only up to the level which existed prior to the **Network Compromise**;
- (b) costs incurred in remedying the issue which allowed **Your Electronic Data** to be destroyed, lost, damaged, or altered during a **Network Compromise**.



4 General Exclusions

We will not have any liability under this **Policy** for, in any way connected with or arising out of:

4.1 Acquisitions and Sales

any act, error, omission, **Personal Injury**, **Network Compromise** or **Data Breach** committed;

- (a) by any entity formed or acquired by **You** unless it becomes a newly acquired **Subsidiary** or
- (b) by any entity before it became a newly acquired **Subsidiary**, unless **We** agree by **Endorsement** to the **Policy** to provide such coverage, or
- (c) by any entity that was a **Subsidiary** or newly acquired **Subsidiary** after it ceases to be a **Subsidiary** or newly acquired **Subsidiary**.

4.2 Bodily Injury

actual or alleged **Bodily Injury**, except that this exclusion will not apply to any mental anguish or emotional distress caused as a result of a **Publication Breach** or **Data Breach**.

4.3 Business Practice

actual or alleged anti-trust violation, price fixing, restraint of trade, unfair competition, violation of consumer protection laws, or false, deceptive or unfair trade practices. This exclusion, however, does not apply to **Claims** based on **Data Breach** under consumer privacy protection laws.

4.4 Contractual Liability

liability assumed or accepted by **You** under any contract or agreement, including any guarantee or warranties, except to the extent that **You** would have been liable in the absence of such contract or agreement.

4.5 Director, Officer and Employee Claims

a **Claim** made by or on behalf of or instigated by any of **Your** directors, officers or **Employee** except in respect of a **Data Breach**.

4.6 Dishonesty, Intentional, Illegal or Reckless Acts

any dishonest, intentional, fraudulent, malicious, reckless, or criminal act or omission by any party with the consent or prior knowledge of any officer, director or partner, or spouse of any officer, director or partner of **Yours**.

4.7 Electrical Failure

any electrical failure including electrical power interruption, surge, brownout or blackout, except this exclusion does not apply when the electrical failure is solely caused by **Your** negligence in performing **Your** business.



4.8 **Electromagnetic Discharge**

the existence, emission or discharge of any electromagnetic field, radiation or magnetism that allegedly or actually affects the health, safety or condition of any person or environment, or that affects the value, marketability, condition or use of any property.

4.9 **Employment Practices, Directors and Officers**

employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees, discrimination, humiliation, harassment, or misconduct based on an individual's race, creed, colour, age, gender, national origin, religion, disability, marital status or sexual preference or other classification.

4.10 **ERISA/ Securities**

actual or alleged violation of:

- (a) the Employee Retirement Income Security Act of 1974 (USA);
- (b) the Securities Act of 1933 (USA);
- (c) the Securities Exchange Act of 1934 (USA);
- (d) the Racketeer Influenced and Corrupt Organization Act 1961 (USA);
- (e) the Securities Fraud Enforcement Act 1988 (USA);
- (f) the Money Laundering Control Act 1981 (USA);
- (g) the Bank Security Act 1970 (USA);
- (h) the Right of Financial Privacy Act 1978 (USA); or
- (i) any rules, regulations or amendments issued in relation to the above acts, or any similar legislation in any other jurisdiction.

4.11 **Failure and Power Outage**

power outage and any failure due to any cause whatsoever of any system, infrastructure, or network over which **You** have no direct control.

4.12 **Financial Guarantees**

any promise, representation, or guarantee for or relating to return on investment, cost savings, or profits.

4.13 **Gaming and lotteries**

actual or alleged gambling, contest, lottery, promotional game or other game of chance.

4.14 **Geographical Limits**

products distributed, licensed, leased or sold, services provided, or **Media Activities** undertaken, outside the Geographical Limits stated on the **Schedule**.



4.15 **Higher Standard of Care**

actual or alleged express or implied representation establishing an express or implied standard of care as to provision of a product or service higher than the accepted industry standard.

4.16 **Insufficient Resources**

where, at the time the contract was entered into, **You** were aware or ought to have been aware that there were not sufficient technical, creative, logistical, or financial resources to perform the contract as promised, including any under budgeting of a project.

4.17 **Insured v Insured**

a **Claim** made by **You** or on **Your** behalf against **You**.

4.18 **Jurisdiction**

legal proceedings brought in a court of law outside the jurisdiction stated in the **Schedule** or brought in a court of law within the jurisdiction stated in the **Schedule** to enforce a judgement or order made in any court of law outside the jurisdiction stated in the **Schedule**.

4.19 **Licensing fees and Royalties**

licensing fees or royalties ordered, directed or agreed to be paid by **You** pursuant to a judgment, arbitration award, settlement agreement or similar order for the use of a person or entity's copyright, design rights, performing rights, title, slogan, trademark, trade name, trade dress, service mark, or service name.

4.20 **Mergers**

any act, error, omission, **Personal Injury**, or **Data Breach** committed or any **Extortion Demand**, or **Network Compromise** that occurs:

- (a) after **You**, or all or substantially all of **Your** assets, are acquired by another entity,
- (b) after **You** have merged or consolidated with or into another entity if **You** are not the surviving entity, or
- (c) after any person or entity or group of persons and entities obtains the right to vote, select or appoint more than fifty percent (50%) of the directors of **You**.

4.21 **Ownership**

a **Claim** by any person or entity if on or after the date or time of the act, error or omission giving rise to such a **Claim**;

- (a) **You** controlled, owned, operated or managed such entity; or
- (b) **You** were an owner, partner, member, director, officer or **Employee** of such person or entity.

Control of or ownership in a business enterprise is presumed if **You** owned or held ten percent (10%) or more of the equity and/or debt instruments of such enterprise.



4.22 **Other Professional Advice**

any professional advice.

4.23 **Patents and Trade Secrets**

any patent rights, misuse of patents or trade secrets. This exclusion shall not apply to **Loss** arising from **Claims** directly resulting from a **Network Compromise** which is covered under section 3.2 Security and Privacy Liability.

4.24 **Prior Acts**

any fact or circumstance known by **You** or ought reasonably to have been known by **You** prior to the **Period of Insurance** whether or not such a fact or circumstance was notified under another insurance **Policy**, or which arises from or is related to the same originating cause as any notified fact or circumstance.

4.25 **Product Recall**

the costs of:

- (a) tracing, recall, replacement and/or disposal of any services or products; or
- (b) reprinting, recall, withdrawal, removal or disposal of any media communication.

4.26 **Property Damage**

actual or alleged physical damage or destruction of any tangible property, including resulting **Loss** of use.

4.27 **Payment Card Industry (PCI) Fines and Assessments**

the costs of any PCI fines or assessment costs.

4.28 **Regulatory Action**

any governmental, quasi-governmental or regulatory action or investigation, except with respect to a **Regulatory Investigation**.

4.29 **Retroactive Date**

any act, error, omission, **Personal Injury** or **First Party Event** that occurs before the **Retroactive Date** stated in the **Schedule**.

4.30 **Shareholder Action**

a **Claim** made by or on behalf of or instigated by any shareholder of **You**, acting in the their capacity as such, except when made as a customer or client of **You**.

4.31 **Software Upgrades**

any failure to install and maintain automatically provided updates from the software provider for business critical software.



4.32 **Supplier Disputes**

any accounting or recovery of profits, royalties, fees, contractual penalties, or other monies claimed to be due from **You** or for alleged excessive or unwarranted fees, compensation or charges of any kind made by **You**.

4.33 **Unlawful Activity**

any act or omission by **You** intended to secure a profit or advantage to which **You** are not legally entitled.

4.34 **Unsolicited Communications and Data Collection**

- (a) unsolicited faxes, emails or other communications sent by **You** or on **Your** behalf to any third party;
- (b) actions brought under the Telephone Consumer Protection Act, the CAN-SPAM Act of 2003 or other similar federal, state or local statute, law or regulation in any jurisdiction.

This exclusion shall not apply to **Loss** covered under insuring clause 3.8

4.35 **Wear and Tear**

wear and tear (for example a reduction in value through age, natural deterioration, ordinary use, depreciation due to use, damage by exposure to the light, lack of maintenance or damage which happens gradually over a period of time) or failure of any electronic equipment in normal use.



5 General Conditions

5.1 Limit of Liability

- (a) The **Aggregate Limit of Liability** is the total sum that **We** will pay in respect of **You** under this **Policy** and **We** will have no liability in **Excess** of the **Aggregate Limit of Liability**.
- (b) The **Limit of Liability** specified for each of insuring clauses 3.1 to 3.8 is the total sum payable by **Us** under such insuring clause in respect of **You** and **We** will have no liability in **Excess** of such **Limit of Liability** under that insuring clause.
- (c) Any sum paid by **Us** under this **Policy** will erode the relevant **Limit of Liability** of the respective insuring clause and the overall **Aggregate Limit of Liability**.
- (d) Each **Limit of Liability** is part of and not in addition to the **Aggregate Limit of Liability**.
- (e) **We** may at any time pay to **You**, the amount of the relevant **Limit of Liability** for a specified insuring clause (after deduction of any sums already paid), and upon such payment being made **We** shall have no further liability or obligation under such insuring clause.
- (f) **We** may at any time pay to **You**, the amount of the **Aggregate Limit of Liability** and upon such payment being made **We** shall have no further liability or obligation under this **Policy**.

5.2 Application of Excess

Except for insuring clause 3.7, **Loss**, fees or expenses arising out of, based upon or attributable to the same originating cause or event will be considered to be one single cause or event and only the largest applicable **Excess** will be applied to the aggregate amount payable in respect of such single cause or event.

For Insuring Clause 3.7 a time deductible as stated on the **Schedule** will apply.

5.3 How to Make a Claim

In the event of an incident, please contact the twenty-four (24) hour XL Catlin Cyber Response Hotline: Telephone: **0800 279 8073**

- (a) **You** must give **Us** written notice of any:
 - (i) **Claim** first made against **You**; or
 - (ii) any **First Party Event**;as soon as practicably possible, during the **Period of Insurance**, or **Discovery Period**, on first becoming aware of the existence of a **Claim** or a **First Party Event**.
- (b) a **Claim** or **First Party Event** is deemed to be first made against **You** when any **Responsible Person** first becomes aware or should have reasonably been aware of:
 - (i) receiving such a **Claim**; or
 - (ii) such **First Party Event**.



5.4 **Notification of Circumstance**

- (a) **You** may, during the **Period of Insurance**, notify **Us** of any fact or circumstance which may in the opinion of the **Responsible Person** give rise to a **Claim**. Such notice must include the reasons why **You** anticipate that the fact or circumstance may give rise to a **Claim** and, where available, full particulars of the dates, acts and persons involved.
- (b) any **Claim** made after expiry of the **Period of Insurance** which alleges, arises out of, is based upon or attributable to any fact or **Wrongful Act** which has the same originating cause, source or event as:
- (i) a **Claim** first made during the **Period of Insurance** (or applicable **Discovery Period**) which has been notified to **Us** in accordance with clause 5.3 above;
- or
- (ii) a fact or circumstance which has been notified to **Us** in accordance with clause 5.4(a) above;
- will be treated by **Us** as having been notified during the **Period of Insurance**.

5.5 **Discovery Period**

If this **Policy** is not renewed or replaced, and if the total premium for this **Policy** has been paid in full, **You** will be entitled to:

- (a) an automatic **Discovery Period** of thirty (30) days; and
- (b) purchase an optional **Discovery Period** of one (1), two (2), or three (3) years. The premium for the optional **Discovery Period** will be:
- (i) one (1) year optional **Discovery Period**, one hundred percent (100%) of the annual premium for the **Policy**;
- (ii) two (2) year optional **Discovery Period**, one hundred and fifty percent (150%) of the annual premium for the **Policy**;
- (iii) three (3) year optional **Discovery Period**, one hundred and seventy-five percent (175%) of the annual premium for the **Policy**;

provided always that:

- (1) such premium is received by **Us** within thirty (30) days after the end of the **Period of Insurance**; and
- (2) this **Policy** was neither renewed nor replaced upon its natural expiry; and
- (3) **You** are or have not become aware of any circumstance likely to give rise to a **Claim** under this **Policy** in the period between expiry/non-renewal of the **Policy** and the decision to purchase the **Discovery Period**; and
- (4) the automatic **Discovery Period** will be part of and not in addition to any optional **Discovery Period** purchased by **You**; and



- (5) the **Discovery Period** is non-cancelled and the premium for the optional **Discovery Period** is deemed fully earned at the inception date of the optional **Discovery Period**.

The first sixty (60) days of the optional **Discovery Period**, if purchased, will run concurrently with the automatic **Discovery Period**. The purchase of the optional **Discovery Period** will not in any way increase the **Aggregate Limit of Liability** or any particular **Limit of Liability**, and any payments made with respect to **Claims** first made during the optional **Discovery Period** will be part of and nor in addition to the **Aggregate Limit of Liability**, or a particular **Limit of Liability**, for all **Claims** made during the **Period of Insurance**. No **Discovery Period** will apply in the event that a **Change in Control** takes place in respect of **You** during the **Period of Insurance**.

5.6 Cooperation and Mitigation

You will:

- (a) take all practical steps to prevent or minimise any **Loss, Loss of Profit**, fee or expense;
- (b) render all practical assistance to and cooperate with **Us** in the defence of any **Claim** and the assertion of reimbursement and contribution rights; and
- (c) give such information and assistance to **Us** as **We** may reasonably require to enable **Us** to investigate any matter under which **You** seek cover under this **Policy** or determine **Our** liability under this **Policy**.

Unless expressly provided for in this **Policy** or otherwise agreed in writing by **Us**, such steps will be at **Your** own cost and will not include the admission or assumption of any liability, or settlement of any **Claim** without **Our** prior written consent. It is agreed however that self-reporting to any **Official Entity** shall not, in itself, be deemed to be an admission of liability.

If **You** breach this condition, it may impact **Your** ability to make a **Claim** under this **Policy**.

5.7 Emergency Response Costs

We will have no liability to reimburse **You** under insuring clause 3.4 unless **You**:

- (a) give written notice to **Us** as soon as practicably possible of agreeing to make such payments, of both:
 - (i) the fact, circumstance or event that might reasonably have been anticipated to give rise to a **Claim** under this **Policy**; and
 - (ii) the nature of the amounts paid or incurred by **You**; and
- (b) establishes to **Our** reasonable satisfaction that:
 - (i) such anticipated **Claim** would have been covered under this **Policy**; and
 - (ii) because of an emergency situation faced by **You**, it was reasonable and necessary for **You** to make the payment or incur the costs, fees or expenses prior to notification; and
 - (iii) the amount paid or incurred by **You** was reasonable.



5.8

Change in Control

- (a) If during the **Period of Insurance** a **Change of Control** occurs, **We** will not be liable for or make any payment of **Loss, Loss of Profit**, fee or expense arising out of, based upon or attributable to any act or omission occurring after the **Change in Control**.
- (b) **You** will, as soon as practicable, give **Us** written notice of any **Change in Control**.
- (c) Cover for any **Subsidiary** under this **Policy** will only apply in respect of acts or omissions occurring while such entity is a **Subsidiary**

5.9

Subrogation and Recoveries

- (a) If **We** become liable for any payment under this **Policy**, **We** will be subrogated to all rights and remedies available to **You** in connection with that liability and will be entitled to bring proceedings in the **Your** name.
- (b) **You** will take all steps necessary or required by **Us** whether before or after payment by **Us** to preserve the rights and remedies which **You** may have to recover **Your Loss**, costs, fees or expenses from any third party.
- (c) Both before and after any payment under this **Policy**, **You** will provide **Us** any assistance in **Your** power as **We** may require securing such rights and remedies as set out in clause (a) and (b) above and will take all steps required by **Us**.



axaxl.com

XL Catlin Insurance Company UK Limited
20 Gracechurch Street, London, EC3V 0BG, United Kingdom

Telephone: +44 (0)20 7626 0486 Fax: +44(0)20 7623 9101 **axaxl.com**

XL Catlin Insurance Company UK Limited | Registered office: 20 Gracechurch Street, London, EC3V 0BG Registered in England No 5328622
XL Catlin Insurance Company UK Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority