



Policy

Directors and Officers

Directors and Officers Liability Insurance

XL Insurance Company SE
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XL Insurance Company SE | A European public limited liability company registered in Ireland | Registered office: 8 St. Stephen's Green, Dublin 2, Ireland
Registered in Ireland No. 641686

XL Insurance Company SE is regulated by the Central Bank of Ireland.

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Table of Contents

1	Introduction	3
2	Insuring Clause – Directors and Officers Liability.....	8
3	Insuring Clause – Corporate Legal Liability.....	11
4	Insuring Clause – Employment Practices Liability.....	14
5	General Definitions	16
6	General Extensions	21
7	General Exclusions	22
8	General Conditions	25



1 Introduction

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, against the events set out in the Insuring Clauses and occurring in connection with **Your** business during 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 **Your** broker 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 Third Party Rights

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

1.3 Insurance Act 1936

All monies which become or may become payable by **Us** under this policy shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in the Republic of Ireland.

1.4 Stamp Duties Consolidation Act 1999

The appropriate stamp duty has been or will be paid in accordance with the provisions of Section 5 of the Stamp Duties Consolidation Act 1999.

1.5 Government Charges

The first premium includes any such charges.

1.6 Currency

The currency of all premiums, sums insured, limits of liabilities and deductibles shown in this policy or **Schedule** or any subsequent renewal notice or **Endorsement** shall be treated as being Euro.

1.7 Law and Jurisdiction

The parties are free to choose the law applicable to this policy. Unless specifically agreed to the contrary this policy shall be governed by Irish law and subject to the exclusive jurisdiction of the courts of the Republic of Ireland.

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



1.8 Interpretation

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) if any term, condition, exclusion or **Endorsement** or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c) the headings are for general reference only and shall not be considered when determining the meaning of this policy

1.9 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** 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 **Notifiable 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**. 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 **Notifiable 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 **Notifiable 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 **Notifiable Claim** in which case the full annual premium is due.

1.10 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 **Notifiable 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:

- (ii) treat this policy as if it never existed, refuse to pay any loss and return the premium **You** have paid, if **We** would not have provided **You** with cover;
- (iii) 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;
- (iv) 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** thirty (30) days' notice that **We** are terminating this policy; or
- (2) give **You** notice that **We** will treat this policy and any future **Notifiable Claim** in accordance with (ii) and/or (iii), in which case **You** may then give **Us** thirty (30) days' notice that **You** are terminating this policy.

If this policy is terminated in accordance with (1) or (2), **We** will refund any premium due to **You** in respect of the balance of the **Period of Insurance**.

1.11 **Changes We Need to Know About**

You must tell **Us** as soon as possible if **You** become aware of any changes in the information **You** have provided to **Us** which happen 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 **Notifiable Claim You** make or could result in **Your** insurance being invalid.

1.12 **Fraud**

If **You**, or anyone acting for **You**, makes a fraudulent **Notifiable 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 **Notifiable Claim**; and
- (b) may recover from **You** any sums paid by **Us** to **You** in respect of the **Notifiable 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 **Notifiable Claim**, or the notification of a potential **Notifiable Claim**); and
- (ii) **We** need not return any of the premium paid.

1.13 **Sanctions**

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

1.14 **Complaints Procedure**

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, Irish Branch
8 St. Stephen's Green
Dublin 2
D02 VK30
Ireland

Telephone Number: +353 (01) 607 5300
Email: XLICSEcomplaints@axaxl.com

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

The complaint will be acknowledged, in writing, within 5 (five) business days of it being made.

If **You** remain dissatisfied after the Complaints Department has considered the complaint or a final decision has not been received within forty (40) business days, **You** can refer the complaint to the Financial Services and Pensions Ombudsman at:

The Financial Services and Pensions Ombudsman
Lincoln House, Lincoln Place
Dublin 2
D02 VH29
Ireland

Email: info@fspo.ie
Telephone Number: +353 1 567 7000

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 Insurance Company SE is the Financial Services and Pensions Ombudsman, which can be contacted directly using the contact details above. For more information about ODR please visit <http://ec.europa.eu/odr>



1.15 **United Kingdom Financial Services Compensation Scheme**

We are covered by the United Kingdom 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** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this policy. Further information about the Scheme is available from the Financial Services Compensation Scheme (10th Floor, Beaufort House, 15 St Botolph Street, London, EC3A 7QU, United Kingdom) and on their website: www.fscs.org.uk

1.16 **Regulatory Information**

(a) **XL Insurance Company SE**

XL Insurance Company SE is a European public limited liability company and is regulated by the Central Bank of Ireland.

Registered Office 8 St. Stephen's Green, Dublin 2 D02 VK30, Ireland.
Registered in Ireland Number 641686.

You can check this information on the Central Bank of Ireland's website at www.centralbank.ie which includes a register of all the firms they regulate.

(b) **XL Catlin Services SE**

XL Catlin Services SE acts as an agent of XL Insurance Company SE in connection with this policy. XL Catlin Services SE is a registered insurance intermediary authorised and regulated by the Financial Conduct Authority (Firm Reference No. 753688).

Registered Office 8 St. Stephen's Green, Dublin 2, D02 VK30, Ireland.
Registered in Ireland Number 641686.

(c) **Angel Risk Management**

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

Registered office: 20 Gracechurch Street, London, EC3V 0BG, United Kingdom.
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.

1.17 **Fair Processing Notice**

This Privacy Notice describes how XL Insurance Company SE (for the purpose of this notice "**we**", "**us**" or the "**Insurer**") collect and use the personal information of insureds, claimants and other parties (for the purpose of this notice "**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/footer/privacy-and-cookies>.

2 Insuring Clause – Directors and Officers Liability

2.1 Operative Clause

We will insure **You** and the **Director**, as detailed below, against any **Notifiable Claim** made against them in the Covered Jurisdictions stated in the **Schedule**, subject to all the terms and conditions of this policy:

(a) **Director's Liability**

We will pay on behalf of the **Director Loss** arising from a **Notifiable Claim** against the **Director** in their capacity as such provided that the **Notifiable Claim** is first made during the **Period of Insurance** except to the extent Operative Clause 2.1(b) applies.

(b) **Your Reimbursement**

We will pay on **Your** behalf any sums that **You** have paid to or are held liable to pay the **Director** by way of an advancement or reimbursement in relation to the **Director's** liability that would otherwise be covered by Operative Clause 2.1(a).

(c) **Shareholders Derivative Costs**

We will pay on **Your** behalf the **Shareholders Derivative Costs**.

(d) **Identity Theft**

We will pay **Defence Costs** incurred by the **Director** in connection with an **Identity Theft Claim** first made during the **Period of Insurance**.

2.2 Limit of Liability

The Limit of Liability is the maximum amount **We** shall be called upon to pay under this policy in respect of any one **Notifiable Claim**, in respect of Operative Clause 2.1.

In certain Extensions a sub-limit may be applicable and these are also stated in the **Schedule**.



2.3 Deductible

Where a deductible applies under Operative Clause 2.1(b), **We** shall be liable for **Loss** which exceeds the deductible. The deductible does not form part of **Our** liability for **Loss** and shall remain uninsured. **We** shall only be liable to the extent that any liability exceeds the relevant deductible.

The deductible shall be as stated in the **Schedule**.

2.4 Extensions

The following clauses extend cover provided under Operative Clause 2.1 and are subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy.

(a) Corporate Manslaughter

We shall pay the **Loss** of any **Director**, under Operative Clause 2.1(a), with respect to any proceeding brought against them for any gross breach of duty of care that causes the death of another person.

(b) Discovery Period

In the event that, on the expiry of the **Period of Insurance**, this policy is not renewed or replaced with any other Management Liability policy broadly equivalent to this policy in scope then the **Director** shall have the right to purchase a **Discovery Period** so that for the purposes of Operative Clause 2.1(a), any **Notifiable Claim** made in the **Discovery Period** shall be treated as having been first made during the **Period of Insurance**, subject to the following conditions:

- (i) cover shall apply only to **Notifiable Claims** arising out of **Wrongful Acts** committed (or alleged to have been committed) prior to the expiry of the **Period of Insurance**; and
- (ii) the **Discovery Period** is only effective if the following additional premium is paid within thirty (30) days of the expiry of the **Period of Insurance**:
 - (1) 50% for a **Discovery Period** of twelve (12) months;
 - (2) 100% for a **Discovery Period** of twenty-four (24) months.

We, at **Our** sole discretion, may offer or agree to a **Discovery Period** of up to seventy-two (72) months on terms including as to premium as **We** may think appropriate.

- (iii) the right to purchase the **Discovery Period** is not exercisable after or, once purchased, shall lapse upon:
 - (1) the **Director** or **You** effecting a Management Liability policy broadly equivalent to this policy in scope; or
 - (2) the appointment of an insolvency practitioner (or equivalent) as **Your** liquidator, administrator or receiver (or equivalent); and
- (iv) **We** shall have no liability to a **Director** to the extent that the **Director** is entitled to a reimbursement from **You** under any applicable company law or agreement.



(c) **Retirement Run-Off**

In the event that, on the expiry of the **Period of Insurance**, this policy is not renewed or replaced with any other Management Liability policy broadly equivalent to this policy in scope then this policy shall extend to cover any **Director** who has retired or resigned prior to the date of such expiry in respect of **Notifiable Claims** made against that **Director** for a further six (6) years immediately following such retirement or resignation. However this extension shall apply only:

- (i) in respect of **Wrongful Acts** committed before the expiry of the **Period of Insurance**; and
- (ii) if the **Director** has retired or resigned for reasons other than disqualification or as a result of a merger, consolidation or acquisition as detailed in Condition 8.10(a); and
- (iii) up to an aggregate sub-limit of 25% of the Limit of Liability stated in the **Schedule**.

(d) **Outside Boards**

Operative clause 2.1(a) shall extend to any **Wrongful Act** committed in the capacity of **Outside Director**, but only in excess of the aggregate of:

- (i) the amounts reimbursable by the entity on whose board the **Outside Director** is serving; and
- (ii) any other collectible insurance cover available to the **Director**; and
- (iii) a deductible which shall be the deductible figure specified in Clause 2.3 – Deductible.

(e) **Spouses / Estates**

We will pay on behalf of:

- (i) the **Director's** lawful spouse (which will include civil partnerships that are recognised by law in their country of domicile) a sum to compromise enforcement proceedings brought against joint property held or owned by or on behalf of the spouse to enforce a court judgement against the **Director** in respect of a **Notifiable Claim** that would otherwise be covered under this policy.
- (ii) the estate, heirs and legal representatives of a **Director** in the event of their death, incapacity or bankruptcy, but only in respect of a **Notifiable Claim** against the **Director** that would otherwise be covered under this policy.

(f) **Personal Appointments**

Operative clause 2.1(a) shall extend to any actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by a **Director** whilst serving in a personal capacity as a governor or trustee of a **School, Charity or Charitable Organisation** but only in excess of the aggregate of:

- (i) the amount of **Loss** reimbursable by the **School, Charity or Charitable Organisation** to the **Director**; and
- (ii) any other valid and collectible contract of insurance, whether it responds or not.



Provided that:

- (1) the **Director** is formally appointed on written authority; and
- (2) the maximum aggregate amount payable by **Us** shall not exceed EUR 500,000 or 25% of the Limit of Liability, whichever is the lesser.

(g) **Regulatory Crisis Costs**

We will pay on behalf of the **Director**, under Operative Clause 2.1(a), any fees, costs and expenses of any consultant chosen by a **Director**, with **Our** prior written consent, incurred in responding to:

- (i) a raid or on-site visit to **You** which first takes place during the **Period of Insurance** by any **Official Entity** that involves the production, review, copying or confiscation of files or interviews of any **Director**; or
- (ii) a public announcement relating to any event detailed in (a) above; or
- (iii) the receipt by any **Director** during the **Period of Insurance**, from any **Official Entity** of a formal notice which legally compels the **Director** to produce to, or answer questions by or attend interviews with that **Official Entity**.

Provided that the maximum aggregate amount payable by **Us** shall not exceed the sub-limit stated in the **Schedule** during the **Period of Insurance**.

3 Insuring Clause – Corporate Legal Liability

3.1 Operative Clause

We will insure **You** against any **Notifiable Claim** made against **You** in the Covered Jurisdictions stated in the **Schedule**, subject to all the terms and conditions of this policy:

(a) **Corporate Liability**

We will pay on **Your** behalf **Loss** arising from a **Notifiable Claim** against **You** provided that the **Claim** is first made during the **Period of Insurance**.

(b) **Identity Theft**

We will pay **Defence Costs** incurred by **You** in connection with an **Identity Theft Claim** first made during the **Period of Insurance**.

3.2 Limit of Liability

The Limit of Liability is the maximum amount **We** shall be called upon to pay under this policy in respect of any one **Notifiable Claim** in respect of Operative Clause 3.1.

In certain Extensions a sub-limit may be applicable and these are also stated in the **Schedule**.

3.3 Deductible

The deductible shall be as stated in the **Schedule**.



3.4 Extensions

The following clauses extend cover provided under Operative Clause 3.1 and are subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy

(a) **Corporate Manslaughter**

We shall pay **Your Loss**, under Operative Clause 3.1(a), with respect to any proceeding brought against **You** for any gross breach of duty of care that causes the death of another person.

(b) **Defence Costs for Breach of Contract**

We shall pay on **Your** behalf **Defence Costs** resulting from any **Notifiable Claim** arising from an alleged breach by **You** of a written contract or agreement, other than a contract of employment, up to EUR 50,000 or 10% of the Limit of Liability, whichever is the lesser, in excess of:

- (i) any other valid and collectible contract of insurance, whether it responds or not; and
- (ii) the deductible stated in the **Schedule**;

provided that the **Notifiable Claim** is first made against **You** during the **Period of Insurance**.

(c) **Fidelity**

We shall reimburse **You** for any loss of money or other property belonging to **You** first discovered by **You** and notified to **Us** during the **Period of Insurance** arising from the dishonest, fraudulent, criminal or malicious act or omission of any **Employee**, committed with the manifest intent to cause loss to **You** or make an improper financial gain for the **Employee** or for an identified third party, provided that:

- (i) **You** will not be reimbursed for any loss resulting from any act or omission perpetrated after **You** could have discovered or suspected improper conduct on the part of the relevant **Employee**; and
- (ii) any monies which but for such act or omission would be due to **You** or any monies of any person committing or colluding in any such act or omission shall be deducted from any amount payable under this extension; and
- (iii) **Our** liability under this extension shall not exceed EUR 50,000 or 10% of the Limit of Liability, whichever is the lesser, in excess of any other valid and collectible contract of insurance, whether it responds or not and subject to the deductible stated in the **Schedule**.

This extension shall not apply to or include cover for or arising out of or relating to:

- (1) any accounting or arithmetical error or omission or unexplained shortage; or
- (2) the default or non-payment of any loan or other credit agreement; or
- (3) any expenses incurred in establishing the amount of any loss of money or other property; or
- (4) any loss of profit; or



- (5) any loss of interest; or
- (6) any loss of money or other property not belonging to **You**.

(d) **Pension and Employee Benefit Scheme**

Operative clause 3.1(a) is extended to cover **Loss** including **Defence Costs** arising from a **Wrongful Act** committed by **You** in **Your** capacity as administrators of any money purchase (defined contribution) pension or employee benefit scheme which is registered in the **United Kingdom** and governed by the laws of England and Wales and in excess of any other valid and collectible contract of insurance, whether it responds or not, and subject to the deductible stated in the **Schedule**.

3.5 Exclusions

This Section does not apply to or include cover for or arising out of or relating to:

(a) **Breach of Contract**

any actual or alleged breach of contract or agreement, either oral or written, except to the extent as provided in Extension 3.4(b).

(b) **Breach of Copyright**

any actual or alleged plagiarism or breach of copyright or trademark, patents, database rights, registered design or design rights, except to the extent as provided in Extension 3.4(b).

(c) **Monopolies**

any breach of regulatory, statutory or common law aimed at preventing monopolies, price discrimination, fixing of prices or other unfair trade practices.

(d) **Goods**

any liability concerning the manufacture, sale, supply, installation or maintenance of any products or goods.

(e) **Premises Modification**

Loss, other than **Defence Costs**, which constitutes the cost of any obligation, howsoever arising, to provide or modify any premises, equipment or working methods to accommodate the needs of a person with a disability.

(f) **Related Companies**

any **Notifiable Claim** brought by **You** or on **Your** behalf, or any parent or **Subsidiary** company having a controlling interest in **You** or by or on behalf of any entity controlled or managed by **You**.

(g) **Trading Losses**

any trading losses or trading liabilities incurred by **You** or any business managed by or carried on by **You** or on **Your** behalf.



(h) **Information Technology**

any of the following:

- (i) the failure of any computer or other electronic processing device or of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the way expected or intended;
- (ii) the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance.

(i) **Insolvency**

Your insolvency or bankruptcy.

In the event that any portion of any of these exclusions is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

4 Insuring Clause – Employment Practices Liability

4.1 Operative Clause

We will pay on **Your** behalf the **Loss** arising from a **Notifiable Claim** made against **You** in the Covered Jurisdictions stated in the **Schedule**, for an **Employment Practices Wrongful Act** provided that such **Notifiable Claim** is first made during the **Period of Insurance**, subject to all the terms and conditions of this policy.

4.2 Limit of Liability

The Limit of Liability is the maximum amount **We** shall be called upon to pay under this policy in respect of all **Notifiable Claims** under Operative Clause 4.1.

The Limit of Liability shall be the amount stated in the **Schedule**.

4.3 Deductible

The deductible shall be as stated in the **Schedule**.

4.4 Exclusions

This Section does not apply to or include cover for or arising out of or relating to:

(a) **Employee Benefit Schemes**

any breach of law governing, breach of duty of, or breach of trust by **You** relating to any superannuation, pension, profit sharing, health and welfare or other **Employee** benefit scheme, programme, plan or trust established or maintained to provide a **Benefit** to any **Employee** or **Director**.

(b) **Employee Insurance Scheme**

any actual or alleged breach of a legal obligation to obtain or maintain insurance or of any legal obligation relating to any state or legally required sickness, healthcare, disability, pension, benefit, social security or national insurance scheme.



(c) **Involuntary Assumption of Liability**

the involuntary assumption by **You** of the liability for any act or omission whatsoever of any person who is not a **Director** or **Employee**.

(d) **Breach of Health, Wages and Benefits Legislation**

any actual or alleged breach of any law or duty relating to:

(i) health; or

(ii) wages and benefits being:

(1) the amount, calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other reward; or

(2) the classification of **Employee** for wage or hours of work purposes; or

(3) withholdings or other deductions from wages; or

(4) rights to leave or absence from work rights to pay during such absence; or

(5) child labour.

(e) **Breach of Labour Relations Legislation**

any actual or alleged breach of law or duty relating to labour relations being:

(i) the right of any **Employee** to engage in, or to refrain from engaging in, union or other collective activities; or

(ii) the duty or obligation to **Notify**, meet, discuss with, consult with or bargain with any **Employee** or their representative, collectively or otherwise; or

(iii) collectively bargained agreements; or

(iv) strikes, work stoppages, boycotts, picketing, lockouts or other industrial action.

(f) **Breach of Redundancy Legislation**

the breach of any law or duty relating to redundancy procedures or requirements where the breach is deliberate or reckless.

(g) **Premises Modification**

the cost of any obligation, howsoever arising, to provide or modify any premises, equipment or working methods to accommodate the needs of a person with a disability.

(h) **Injunctive or Non-Pecuniary Relief**

the cost of compliance with any order for, grant of or agreement to provide injunctive or non-pecuniary relief.

(i) **Benefits**

a **Benefit** due or to become due or their equivalent value, however, this exclusion shall not apply to **Loss** which arises out of a wrongful or unfair dismissal, discharge or termination of employment.

In the event that any portion of any of these exclusions is found to be invalid or unenforceable, the remainder shall remain in full force and effect.



5 General Definitions

Certain words in this policy have a special meaning, where shown in bold other than headings, the word will have the meaning stated below.

- 5.1 **"Angel"** means Angel Risk Management Limited.
- 5.2 **"Asset and Liberty Proceedings"** means any proceeding brought against the **Director** by any body other than **You**, so authorised for the purpose of examining **Your** affairs or the conduct of the **Director** in their capacity as such, seeking:
- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of a **Director**;
 - (b) a charge over real property or personal assets of such **Director**;
 - (c) a temporary or permanent prohibition on such **Director** from holding the office of or performing the function of a **Director**;
 - (d) a restriction of such **Director's** liberty to a specified domestic residence or an official detention;
 - (e) deportation of a **Director** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Director's** conviction of a crime.
- 5.3 **"Asset and Liberty Proceedings Defence Costs"** means **Defence Costs** incurred by the **Director** in dealing with an **Asset and Liberty Proceeding**, provided that such proceeding is commenced during the **Period of Insurance**.
- 5.4 **"Benefits"** means any perquisites, fringe benefit and payment in connection with an **Employee** benefit plan or pension scheme, including share options or any other right to be given or to purchase shares.
- 5.5 **"Claim"** means any demand for compensation or damages, or the allegation of a right that can be enforced through a civil proceeding, alleging a **Wrongful Act**.
- 5.6 **"Criminal Prosecution"** means any prosecution commenced by the police or any other criminal prosecuting body, including under Health and Safety legislation, against the **Director** in their capacity as such or, under Insuring Clause – Corporate Legal Liability against **You**.
- 5.7 **"Criminal Prosecution Defence Costs"** means **Defence Costs** incurred by the **Director** or, under Insuring Clause – Corporate Legal Liability by **You**, in defending a **Criminal Prosecution** that is commenced during the **Period of Insurance**.
- 5.8 **"Defence Costs"** means costs, fees and expenses incurred by **You** or on **Your** behalf or by **Director** with **Our** written consent in the investigation, defence or settlement of any **Notifiable Claim**, suit or proceedings which are or would, if successful, be covered under this policy.

Defence Costs includes any premium paid for insurance instruments or for bonds which may be required.

Defence Costs do not include **Your** or **Your Director's** own costs, fees or expenses (including salaries) or value attributable to the time spent in dealing with a **Notifiable Claim** or a circumstance.



- 5.9 "Director" means any natural person, except an external auditor or an insolvency office holder, who at the date of inception has been or is, or who during the **Period of Insurance** becomes:
- (a) **Your** director or officer, including non-executive directors and persons who hold equivalent positions in any other jurisdiction;
 - (b) an **Outside Director**;
 - (c) an **Employee** acting in any managerial or supervisory capacity or who is named as co-defendant with any **Director**.
- 5.10 "**Discovery Period**" means the period of twelve (12) or twenty-four (24) months immediately following the expiry of the **Period of Insurance** during which written notice may be given to **Us** of a **Wrongful Act** committed (or alleged to have been committed) prior to the expiry of the **Period of Insurance**.
- 5.11 "**Employee / Employment**" means any:
- (a) person under a contract of service or apprenticeship with **You**;
 - (b) labour only sub-contractor and persons supplied by them;
 - (c) person employed by labour only sub-contractors;
 - (d) self-employed person;
 - (e) person hired to or borrowed by **You**;
 - (f) person undertaking study or work experience, voluntary work or a youth training scheme with **You**;
- working for **You** and under **Your** control in connection with **Your** business.
- 5.12 "**Employment Practices Wrongful Act**" means any actual or alleged:
- (a) discrimination with respect to the terms or conditions of **Employment** on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
 - (b) harassment, including unwelcome sexual or non-sexual advances, requests for sexual favours and any unwelcome verbal or physical contact of a sexual or non-sexual nature which:
 - (i) is explicitly or implicitly made a term or condition of **Employment**; or
 - (ii) creates a hostile or offensive working environment for an **Employee**; or
 - (iii) when rejected or opposed by a person becomes a basis for decisions regarding that person's **Employment**;
 - (c) defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for **Employment**, professional reputation, disciplinary history or termination of **Employment**;
 - (d) unfair or constructive dismissal of an **Employee** (or the equivalent in any other jurisdiction) or refusal to hire or promote an **Employee**;
 - (e) adverse change in the terms and conditions of a person's **Employment** in retaliation for that person's exercise of their rights under law, or support of the rights of another.



- 5.13 **"Endorsement"** means a change in the terms and conditions of this policy agreed by **Us** that can extend or restrict cover.
- 5.14 **"Deductible"** means the first part of each and every **Loss**, for which **You** are responsible as stated in the **Schedule**.
- 5.15 **"Extradition Notice"** means:
- (a) any request for the extradition of any **Director**, any warrant for the arrest of any **Director** or other proceedings under the provisions of the Extradition Act 1965 or the European Arrest Warrant Act 2003;
 - (b) any associated appeal, including an appeal to the European Court of Human Rights, and the pursuit of judicial review proceedings against the decision of an appropriately authorised representative of the government of the Republic of Ireland to issue an extradition certificate under the Extradition Act 1965 or the European Arrest Warrant Act 2003;
 - (c) the equivalent of the above in any other jurisdiction;
- arising from a **Wrongful Act**.
- 5.16 **"Extradition Proceedings Defence Costs"** means **Defence Costs** incurred by the **Director** in dealing with an **Extradition Notice**, provided the **Extradition Notice** is first served on the **Director** during the **Period of Insurance**.
- 5.17 **"Identity Theft Claim"** means any **Claim** for damages made by a third party to enforce an agreement entered into with another person fraudulently representing themselves as a **Director** or **You**.
- 5.18 **"Investigation"** means any formal request for information from a **Director** or for the **Director's** attendance, or **Your** attendance under Insuring Clause – Employment Practices Liability, at an interview, which is made by any body other than **You** (unless in respect of any internal investigation instigated as a result of a shareholder derivative action), so authorised for the purpose of examining **Your** affairs or the conduct of the **Director** in their capacity as such.
- Investigation** does not include a risk management visit or equivalent by **Your** regulator.
- 5.19 **"Investigation Defence Costs"** means **Defence Costs** incurred by the **Director** in an **Investigation**, provided the **Investigation** is initiated during the **Period of Insurance**.
- 5.20 **"Loss"** means:
- (a) any award of compensatory damages made by a competent court or tribunal including third party costs or any settlement incurred with **Our** prior written consent; and
 - (b) **Defence Costs**; and
 - (c) **Investigation Defence Costs**; and
 - (d) **Criminal Prosecution Defence Costs**; and
 - (e) **Extradition Proceedings Defence Costs**; and
 - (f) **Asset and Liberty Proceedings Defence Costs**; and
 - (g) **Pollution Defence Costs**; and
 - (h) **Public Relations Expenses**.



Loss does not include:

(i) **Employee** remuneration, benefits, stock or share options or severance payments; or

- (ii) (1) taxes; or
(2) fines; or
(3) civil, regulatory or criminal penalties; or
(4) punitive, aggravated or exemplary damages;

except where legally permissible in the country or territory in which the **Notifiable Claim** is brought.

(iii) in respect of any **Employment Practices Wrongful Act**:

- (1) matters uninsurable under as a matter of applicable law; or
(2) fines or penalties; or
(3) any amount for which **You** are absolved from payment by reason of any covenant, agreement or court order; or
(4) the future salary or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to **Employment**; or
(5) damages, compensation or sums which:
(a) are severance payments; or
(b) are in respect of a notice period; or
(c) are determined to be owing under a written contract of **Employment**; or
(d) are determined to be owing under an express written obligation to make payments in the event of the termination of **Employment**; or
(e) represent any amount **You** would have been liable for in the absence of an **Employment Practices Wrongful Act**.

5.21 "**Non-Indemnifiable Loss**" means any **Loss** of a **Director** that **You** cannot provide an advancement or reimbursement for due to legislative prohibition or insolvency.

5.22 "**Notifiable Claim**" means a **Claim** or an **Investigation** or a **Criminal Prosecution** or an **Extradition Notice** or an **Asset and Liberty Proceeding** or an **Identity Theft Claim**.

5.23 "**Notified**" means that notice is sent by **You** (or **Your** insurance broker) to, and received by, **Us** through **Angel**. For the avoidance of doubt, notice is not valid if given by any third party (other than **Your** insurance broker).

5.24 "**Official Entity**" means any regulator, government, government body, governmental or administrative agency and self-regulatory body recognised as such under applicable law or official trade body.

Official Entity does not include the Pension Ombudsman, the Pensions Regulator, the Pensions Regulator Tribunal, the Pension Protection Fund and/or any successor body or other regulator, government body, government agency or any official trade body concerned with pensions.



- 5.25 **"Outside Director"** means any **Director** formally appointed on **Your** specific request to the board or equivalent position (including in the case of not-for-profit organisations, governors and committee members) in an **Outside Entity**.
- 5.26 **"Outside Entity"** means any entity in which **You** hold a shareholding, including any not-for profit entity, provided that such entity is not:
- (a) a publicly listed company or possesses any assets located within the USA but this proviso shall not apply in the event **We** agree in writing otherwise; or
 - (b) a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity;
- unless such entity has been specified in the **Schedule**.
- 5.27 **"Period of Insurance"** means the period stated in the **Schedule**.
- 5.28 **"Pollution"** means any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including for example smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example material to be recycled, reconditioned or reclaimed) or contamination of any kind of the atmosphere or of any water, land, buildings or other tangible property.
- 5.29 **"Pollution Defence Costs"** means **Defence Costs** incurred in relation to any **Notifiable Claim** first made during the **Period of Insurance**, against the **Director** in their capacity as such, or **You** under Insuring Clause – Corporate Legal Liability, involving any **Pollution**. For the avoidance of doubt, this does not include the costs involved in testing for, monitoring, cleaning up, removing, containing, treating or detoxifying any **Pollution**.
- 5.30 **"Public Relations Expenses"** means the fees, costs and expenses of the public relations consultants incurred by a **Director**, or **You** under Insuring Clause – Corporate Legal Liability, with **Our** prior written consent to be given at **Our** absolute discretion where **We** are satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **Director's** or **Your** reputation from a **Notifiable Claim** first made against the **Director**, in their capacity as such, or **You**, during the **Period of Insurance**.
- 5.31 **"Schedule"** means the document entitled **"Schedule"** that attaches to and forms part of this policy.
- 5.32 **"School, Charity or Charitable Organisation"** means:
- (a) a place or institution for teaching or learning; or
 - (b) a body registered with the Charities Commission; or
 - (c) a voluntary organisation which does not distribute its surplus funds to owners or shareholders, but instead uses them for the benefit of its members or charitable purposes;
- in the Republic of Ireland.
- 5.33 **"Securities"** means any security representing **Your** debt or equity interests.
- 5.34 **"Shareholders Derivative Costs"** means the fees, costs and expenses incurred by **Your** shareholders in pursuing a **Notifiable Claim** first made during the **Period of Insurance** against any **Director** for a **Wrongful Act** by way of a shareholder derivative action on **Your** behalf but only to the extent that **You** are legally liable to pay such fees, costs and expenses pursuant to an order of the Court.



- 5.35 **"Subsidiary"** means a company in which **You**, as at the date of inception of this policy:
- (a) owned or owns directly or through one or more of **Your Subsidiaries** more than 50% of the voting rights or more than 50% of the share capital issued in such entity; or
 - (b) had or has the right to appoint or remove the majority of such entity's board of directors; or
 - (c) controlled or controls alone pursuant to a written agreement with other shareholders or members the majority of the voting rights in such entity, provided that **You** are also a shareholder in it;

but only in respect of **Wrongful Acts** committed in relation to the **Subsidiary** while **Your Subsidiary**.

- 5.36 **"Terrorism"** means an act, including for example the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

- 5.37 **"We / Us / Our"** means XL Insurance Company SE.

- 5.38 **"Wrongful Act"** means any actual or alleged act, error, omission, misstatement, misleading statement, libel, slander, negligent act, negligent error, negligent omission or negligent breach of duty by a **Director** in their capacity as such. **Wrongful Act** shall include any **Employment Practices Wrongful Act** but only if Insuring Clause – Employment Practices Liability Section is stated as Operative in the **Schedule** and, with respect to shareholder derivative actions, any proposed act.

- 5.39 **"You / Your"** means the company/companies stated in the **Schedule** and its/their **Subsidiaries**.

6 General Extensions

Subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy.

6.1 Automatic Acquisition Cover

Where, during the **Period of Insurance**, **You** create or acquire an entity then such entity shall be treated as being a **Subsidiary** for the purpose of this policy provided that:

- (a) **Your** total gross assets including **Your Subsidiaries** as shown, where they exist, in the audited consolidated group accounts most recently preceding the **Period of Insurance** are not increased by the acquisition or creation of such **Subsidiary** by more than 50%; and
- (b) such newly created or acquired **Subsidiary** is not domiciled in the US or has its **Securities** listed or traded on any exchange; and
- (c) cover shall only apply to **Notifiable Claims** arising out of a **Wrongful Act** committed (or alleged to have been committed) subsequent to the effective date of such creation or acquisition.

Where the coverage for a newly created or acquired **Subsidiary** is not automatically conferred as a consequence of (a) or (b) above, then **You** may request that this policy be extended to cover such **Subsidiary** and **We**, at **Our** sole discretion, may alter the terms and conditions of this policy in accordance with Clause 1.11 – Changes **We** Need to Know About.



6.2 Emergency Costs

If **Our** prior written consent cannot practicably be obtained before:

- (a) **Investigation Defence Costs;**
- (b) **Criminal Prosecution Defence Costs;**
- (c) **Pollution Defence Costs;**
- (d) **Extradition Proceedings Defence Costs;**
- (e) **Asset and Liberty Proceedings Defence Costs;**

are incurred, **We** will give retrospective approval for such costs, for an amount not exceeding 10% of the Limit of Liability stated in the **Schedule**, provided that:

- (i) **Our** approval is obtained within fourteen (14) days of such costs being incurred; and
- (ii) the costs would otherwise be covered under this policy.

7 General Exclusions (applicable to all Sections)

This policy does not apply to or include cover for or arising out of or relating to:

7.1 Known Claim or Circumstances

any **Notifiable Claim** or circumstance(s) which may give rise to a **Notifiable Claim** under this policy and which was (or were) known to any **Director** or to **You** prior to the **Period of Insurance**.

This exclusion shall only apply to the **Director** or the party comprising **You** that had the requisite knowledge.

7.2 Death or Bodily Injury

any bodily injury, sickness, disease, emotional distress, mental anguish (other than emotional distress arising from any libel or slander), mental stress or the death of any person, howsoever caused except:

- (a) emotional distress arising from any libel or slander; or
- (b) in respect of **Investigation Defence Costs** or **Criminal Defence Costs**.

This exclusion does not apply to the Employment Practices Liability Section if stated as Operative in the **Schedule** nor any allegation of Corporate Manslaughter.

7.3 Property Damage

any damage to or destruction or loss of any property including loss of use.

7.4 Dishonest or Fraudulent Acts

any intentional dishonest or fraudulent act or omission or any wilful breach of any statute, rule or law committed by the **Director** or **You**.

This exclusion shall only apply to the **Director** who or the party comprising **You** that is actually guilty of the above conduct, as established through a final adjudication by any court, tribunal or other similar body, or formal written admission by the **Director** or the party comprising **You**.



7.5 Profit or Advantage

any unlawful personal profit, remuneration or advantage gained by the **Director** or a financial advantage to any entity in which such **Director** has a financial interest.

This exclusion shall only apply to such **Director** who has benefitted in the above way, as established through a final adjudication by any court, tribunal or other similar body or by a formal written admission by the **Director**.

7.6 Pollution

Pollution. However this exclusion shall not apply to:

- (a) **Pollution Defence Costs** which fall within **Non-Indemnifiable Loss**; or
- (b) any **Notifiable Claim** instigated by way of shareholder derivative action without the willing assistance, procurement, instigation or involvement of any **Director**.

7.7 USA and/or Canada

any **Notifiable Claim**, allegation, proceeding or **Investigation** brought in the United States of America (USA) or Canada, including the enforcement outside the USA or Canada of any judgement, order, award or settlement made within the USA or Canada or which arises from or is connected, , with:

- (a) any event, occurrence or activity of any sort within the USA or Canada; or
- (b) the holding of or dealing in **Securities** listed or traded on any USA or Canadian Exchange or any other form of assets, tangible or intangible in the USA or Canada; or
- (c) activity in the USA or Canada of any parent, **Subsidiary**, associated company, joint venture or special purpose vehicle or company whether or not registered in the USA or Canada.

7.8 Other Insurance

any matter in respect of which the **Director** or **You** are, or but for the existence of this policy would be, entitled to cover under any other valid and collectible contract of insurance, except where such other contract of insurance is written as specific excess insurance to provide reimbursement in excess of the amount payable under this policy. This policy shall only apply in excess of such other contract of insurance to the extent of such part of the Limit of Liability or any applicable sub-limit as exceeds the limit of the other policy.

7.9 Employee Benefit

any retirement, pension, profit-sharing, health, welfare or any other employee benefit fund, trust scheme or plan:

- (a) other than a money purchase (defined contribution) pension or employee benefit scheme which is registered in the Republic of Ireland and governed by the laws of the Republic of Ireland; or
- (b) except to the extent as provided in Extension 3.4(d).



7.10 **Major Shareholder**

any liability based on arising from or attributable to any **Notifiable Claim** brought by or on behalf of, whether directly or derivatively, any individual or entity which owns or controls 50% or more of **Your** issued and outstanding share capital provided that this exclusion shall only apply to any **Notifiable Claim** where such individual or entity or their representative has, participated in or ratified the alleged **Wrongful Act** being the subject of the **Notifiable Claim**.

7.11 **Professional Liability**

any liability arising from or connected with the giving of professional advice or service whether or not for remuneration or any act, error or omission relating thereto.

This exclusion shall not apply to any **Notifiable Claim** arising out of the actual or alleged failure to supervise those who gave or failed to give professional advice or service.

7.12 **Asbestos**

the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss or in respect of that part of any property insured by this policy which consists of asbestos.

7.13 **Radioactive Contamination**

any ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

7.14 **Terrorism**

any act of **Terrorism** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorism**.

7.15 **Nuclear and War**

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, civil war, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion), or chemical, biological, radioactive or similar agents, by any party at any time for any reason.

In the event that any portion of this exclusions Section is found to be invalid or unenforceable, the remainder shall remain in full force and effect.



8 General Conditions (applicable to all Sections)

8.1 Assistance and Co-operation

You and any person insured must provide **Us** through **Angel** with such information, assistance and co-operation as **We** and/or **Our** representative may request. **We** shall be entitled to refuse to pay any **Loss** under this policy in its entirety if **You** or any person insured fail to do so.

In the event of breach of this condition, **We** shall have no liability under this policy, unless **You** show that non-compliance with this condition could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

8.2 Claim Notification

We must be **Notified** during the **Period of Insurance** in writing, by email or by telephone through **Angel** at the Notification Address stated below, or shown in the **Schedule** as soon as practicably possible of the following:

- (a) any **Notifiable Claim** made against **You** or any person insured which is likely to fall within the scope of this policy;
- (b) any circumstances of which **You** or the **Director** shall become aware which are likely to give rise to a **Notifiable Claim** being made against **You** or the **Director**.

We shall be entitled to refuse to pay, or reduce the amount **We** pay, for any **Claim** under this policy if such notice is not received.

In the event that **We** are **Notified** during the **Period of Insurance** of any circumstance which in **Our** opinion may give rise to a **Notifiable Claim** then any subsequent **Notifiable Claim** which arises directly from the circumstance so **Notified** shall be treated as having been made during the **Period of Insurance**.

Notification Address: XL Catlin Services SE
Ground Floor
Marlborough House
Victoria Road South
Chelmsford
Essex
CM1 1LN
United Kingdom

Telephone Number: +44(0)1245 343630
E-mail: claims@angelriskmanagement.com

8.3 Documents Relevant to a Claim

You or any person insured must ensure that all documents relevant to any **Notifiable Claim** and any circumstance which is likely to give rise to a **Notifiable Claim** are not destroyed or otherwise disposed of. **We** shall be entitled to refuse to pay any **Loss** under this policy in its entirety if **You** or any person insured fails to do so.



8.4 Entitlement to Defend

We are entitled, but not obliged, to take over and conduct in **Your** name or the name of any person insured the defence or settlement of any **Notifiable Claim** or to prosecute in **Your** name or the name of any person insured for **Our** own benefit any **Notifiable Claim** for reimbursement or damages or otherwise. **We** shall have full discretion in the conduct of any proceedings and in the settlement of any **Notifiable Claim**. **You** shall be entitled to any and all information and/or documentation regarding the defence, investigation or settlement of any **Notifiable Claim** and/or the investigation into any circumstances as **You** may request from **Us**.

8.5 Limit of Liability and Deductible

(a) Limit of Liability

All payments made by **Us** in respect of any Operative Clause, Extension or any **Endorsement** or otherwise relating to the same **Notifiable Claim** shall erode the Limit of Liability in respect of any one **Notifiable Claim** under this policy.

All **Notifiable Claims** whether made against or sought from **You**, wholly or substantially arising from or having any connection with or relation to:

- (i) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause; or
- (ii) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause; or
- (iii) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated;

shall be treated as being one **Notifiable Claim** for the purposes of deciding the applicable Limit of Liability and the application of the deductible under this policy. **We** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Notifiable Claim**.

(b) Deductible

The deductible is not applicable to **Non-Indemnifiable Loss**.

Payment of the deductible by **You** must be made prior to any payment by **Us** unless **You** are unable to pay by reason of insolvent liquidation or is legally prohibited from paying. In the event that payment of any such deductible is not made within thirty (30) days **We** shall advance to the **Director** all **Loss** within the deductible. In such circumstances **You** agree to repay the deductible to the full extent once **We** have notified **You** of the amount so advanced.

Only one deductible shall apply to **Notifiable Claims** that are related or connected in any way by reference to any common contributory factor or characteristic.

8.6 Non-Admission of Liability

No admission, offer, promise or payment is to be made or given by **You** or on **Your** behalf or any person insured without **Our** written consent. **We** shall be entitled to refuse to pay any **Loss** under this policy in its entirety if any such admission, offer, promise or payment is made.



8.7 Subrogation

In the event of any payment by **Us** under this policy, **We** shall be subrogated up to the amount of such payment to all **Your** rights of recovery or any person insured against any third party, provided always that they shall not exercise any such rights against any **Employee** or former **Employee** unless the **Loss** was caused or contributed to by a fraudulent, dishonest or malicious act or omission by said person.

You and any person insured shall, without charge, provide such assistance as **We** may require in any subrogation and shall at all times protect and preserve any rights of recovery to which they would become subrogated under this policy. **We**, at **Our** option, may take over the conduct of any proceedings to recover monies paid or payable by **Us**, whether or not **You** or any person insured has an interest in such proceedings by reason of any uninsured **Loss**.

8.8 Cancellation

This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over **You** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver or administrator over any of **Your** assets;
- (c) if **You** suspend payment of **Your** debts or any threat by **You** to do so or **You** enter into a voluntary arrangement or other scheme of composition with **Your** creditors;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which **You** may be domiciled or any territory within the specified territory or territories.

For the purpose of this condition, **You** shall mean only the firm or company named in the **Schedule**.

In such cases, **You** shall be entitled to the return of a proportionate part of the premium in respect of the unexpired **Period of Insurance**.

8.9 Non-Imputation

- (a) This policy shall operate severally in relation to each **Director**.
- (b) In determining whether **We** are entitled to apply the provisions of Clause 1.10 – Information You Have Given Us to a **Director's** interest in this policy or reject a **Director's** claim for reimbursement under this policy, **We** shall only take into account the information provided by or the acts, omissions or conduct of, that particular **Director**.
- (c) In determining whether **We** are entitled to apply the provisions of Clause 1.10 – Information You Have Given Us to **Your** interest in this policy where cover is available to **You**, **We** shall only take into account the information provided by or the acts, omissions or conduct on the part of, any two out of **Your** chairman of the board, managing director, finance director, chief legal officer or their equivalents shall be treated to be imputed or attributable to **You**.



8.10 Changes in Risk

- (a) If during the **Period of Insurance You** merge with or consolidate into another entity, or any person or entity acquires 50% or more of **Your** issued share capital (other than by way of a management buy-out being a change of ownership of **You** whereby at least 50% of **Your** issued share capital is transferred to **Your** existing **Directors** and/or members):
- (i) **You** shall **Notify Us** through **Angel** in accordance with Clause 1.11 – Changes **We** Need to Know About; and
 - (ii) cover shall apply to any **Notifiable Claim** arising out of any **Wrongful Act** committed, or alleged to have been committed, prior to the effective date of such merger, consolidation or acquisition, unless otherwise agreed with **Us**;
 - (iii) **You** may request that the policy may be extended for a further six (6) years to provide cover for **Wrongful Acts** occurring prior to the effective date of such merger, consolidation or acquisition. This extension shall be at **Our** sole discretion and may amend the terms of this policy and:
 - (1) Extensions 2.4(b) – Discovery Period and 2.4(c) – Retirement Run-Off will not apply to any such extension;
 - (2) cover shall lapse in the event that **You** effect any other Management Liability policy broadly equivalent to this policy in scope;
 - (3) cover shall not be provided to any **Director** who has been or is disqualified from holding such position.
- (b) **We** shall not have any liability under this policy, including any **Endorsements**, arising out of, or in any way connected with any purchase, exchange or sale, or offer to purchase or sell **Securities** by means of a prospectus or private placement on or after the commencement of the **Period of Insurance**. However **We** may at **Our** discretion offer such cover in this regard on terms including as to premium as **We** may think appropriate.

8.11 Advanced Payment of Defence Costs

We shall pay **Defence Costs**, or any other costs and/or expenses payable under this policy. However in the event and to the extent that it is finally determined that the **Director** or **You** are not entitled to such payments under this policy the sums advanced shall be repaid by the **Director** or **You** as applicable to **Us** upon demand, and failing that the Limit of Liability will automatically be reduced by the amount of such advance payment.

8.12 Allocation

In the event of:

- (a) any **Loss** or **Shareholders Derivative Costs** being partially excluded by the terms of this policy; and/or
- (b) any **Notifiable Claim** against a **Director** being also made against **You** and/or one or more persons who are not insured under this policy;

then **We**, the **Director** and/or **You** shall use their best endeavours, based on established judicial decisions, to agree such an allocation of the **Loss** and professional costs and expenses to the policy as may be appropriate, having regard to the legal and financial exposures of the relevant parties and the proportion to which the **Losses** and professional costs and expenses are not covered under this policy.



8.13 **Order of Payments**

Where there are multiple demands for reimbursement under this policy, **We** shall make payments in the order those demands are presented to **Us**.

If it becomes apparent to **Us** in **Our** absolute discretion that the Limit of Liability will not be sufficient to cover all expected payments under the policy then **We** will make payments in the following order:

- (a) payments under Operative Clause 2.1(a), direct to the **Directors**, followed by;
- (b) payments under Operative Clause 2.1(b) to **You**, followed by;
- (c) any other payments to **You**.