



# Policy

---

## **Contractors Design and Professional Services Professional Liability Insurance**

**Aggregate  
Defence Costs and Expenses Inclusive**

XL Insurance Company SE  
XL House, 8 St Stephens Green, Dublin 2, D02 VX30

Telephone: +353 1 607 5300 Fax: +353 1 607 5333 [axaxl.com](http://axaxl.com)

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.

Directors: P.R.Bradbrook (UK), B.R.P.Joseph (UK), Y.Slattery, P. Wilson (UK), D. Palici-Chehab (FR), J. O'Neill, H. Browne, P.H. Rastoul (FR)



## Table of Contents

1	Introduction .....	3
2	Insuring Clauses .....	8
3	Definitions .....	10
4	Limit of Liability .....	12
5	Deductible .....	12
6	Exclusions .....	13
7	Conditions .....	18



## 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 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 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.

## 1.10 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 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 loss 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** thirty (30) days' 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** 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 claim **You** make or could result in **Your** insurance being invalid.

#### 1.12 **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.

#### 1.13 **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](mailto: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](mailto: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 (10<sup>th</sup> Floor, Beaufort House, 15 St Botolph Street, London, EC3A 7QU, United Kingdom) and on their website: [www.fscs.org.uk](http://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](http://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](http://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](mailto: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 Clauses

### 2.1 Legal Liability

- (a) **We** shall reimburse **You** in respect of any settlement, damages, interest and claimant's costs arising from any **Claim** first made against **You** during the **Period of Insurance** and **Notified** during the **Period of Insurance** and which arises out of the conduct of **Your Business** by reason of:
- (iv) a **Wrongful Act** committed by **You** or by any **Employee** or any consultants, sub-contractors, specialist designers or others directly appointed by and acting for or on **Your** behalf (provided that at all times the rights of recourse against such consultants, sub-contractors and specialist designers are not waived or otherwise impaired);
  - (v) any unintentional breach of confidentiality committed by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf.
- (b) The reimbursement shall apply in respect of legal liability arising out of the conduct of **Your Business** whilst a member of any joint venture or consortium but provided always that:
- (i) the existence of any such activity and relevant fees or turnover have been declared to **Us**,
  - (ii) **You** have not, unless with **Our** prior consent, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
  - (iii) **We** remain at all times entitled to exercise **Our** rights of subrogation,
  - (iv) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium, unless such **Claim** emanates from a completely independent third party, and



- (v) the reimbursement under this policy shall be limited to **Your** liability for loss or damages arising directly from any **Wrongful Act** by **You**, irrespective of **Our** liability as a member of the joint venture or consortium, but shall in any event be no greater than any contractually agreed share of liability in the joint venture or consortium agreement, or in the absence of any such provision to such proportion as the Value of **Your** contribution to the joint venture or consortium in money and/or services bears to the total value of such contributions by all the participating parties in the joint venture or consortium. "Value" in this clause shall mean the actual money contributed or the financial cost to the participating parties of the services provided. Where such cost is unknown a reasonable estimate shall be made.

## 2.2 Defence Costs and Expenses

**We** shall reimburse **You** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under insuring clause 2.1; or
- (b) the investigation of any circumstance **Notified** to **Us** under condition 7.1 which may give rise to a **Claim**,

incurred by **You** or on **Your** behalf with **Our** prior written and continuing consent (such consent not to be unreasonably withheld) but not including **Your** own costs and expenses or any value attributable to the time spent by **You** or any **Employee** in dealing with a **Claim** or a circumstance.

## 2.3 Mitigation Costs

**We** shall reimburse **You** in respect of any costs and expenses (excluding any element of **Your** own profit) necessarily incurred, prior to hand-over of any contract works, with **Our** prior written and continuing consent in respect of any action taken solely to mitigate a loss or potential loss that would otherwise become the subject of a **Claim** covered under clause 2.1 of this policy, or circumstance **Notification** under condition 7.1. Such action taken to mitigate must be **Notified** during the **Period of Insurance**.

## 2.4 Safety Health and Welfare at Work (Construction) Regulations 2006

**We** will reimburse **You** for defence costs and expenses incurred during the **Period of Insurance** with **Our** prior written consent in the defence of any proceedings brought under the Safety, Health and Welfare at Work (Construction) Regulations 2006 or any amending legislation, but only where **We** believe that defending such proceedings would be of benefit against any subsequent or concurrent civil action that is likely to be the subject of a **Claim** under this policy.

## 2.5 Criminal Prosecution

**We** will reimburse **You** for defence costs and expenses incurred during the **Period of Insurance** with **Our** prior written consent in the defence of any criminal proceedings against **You** or any of **Your Employees** which arises from the alleged breach of any statutory regulation in any legal jurisdiction stated in the **Schedule** where such alleged breach arises out of the conduct of **Your Business**.

Provided always that:

- (a) the proceedings are likely to give rise to a **Claim** against **You** that would be reimbursable under this policy,



- (b) in **Our** reasonable belief the defence of such proceedings would assist in the defence of any **Claim** against **You** arising from such proceedings that would be reimbursable under this policy,
- (c) any subsequent or concurrent **Claim** that would be reimbursable under this policy and that arises out of any proceedings **Notified** under this insuring clause, shall be subject to the notification obligations of condition 7.1
- (d) any appeal against the outcome of any initial proceedings shall be treated as being "proceedings" for the purpose of this insuring clause.

## 2.6 **Loss of Documents or Data**

**We** shall reimburse **You** for costs, incurred with **Our** prior written consent, of repair, replacement or reconstitution of any **Document or Data** which has been unintentionally destroyed, damaged, lost or mislaid during the **Period of Insurance** (and which after diligent search cannot be found) the occurrence of which has been **Notified** during the **Period of Insurance**.

## 2.7 **Witness Attendance**

**We** will pay to or reimburse **You** the cost of attendance at any Court, Arbitration or Adjudication hearing by **You**, including any **Employee** or any other relevant party (but not including expert witnesses) in the event that the legal advisers acting on **Your** behalf require such attendance, provided that **We** have given **Our** prior written consent to such attendance, as a witness of fact in connection with a **Claim** made against **You** for which cover is afforded under this policy, at the following rates for each day or part thereof on which such attendance is required:

- (a) **Your** principal, partner, member or director EUR 200
- (b) any **Employee** EUR 100
- (c) any other relevant party up to EUR 200

## 3 **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.

3.1 **"Angel"** means Angel Risk Management Limited.

3.2 **"Claim"** means:

- (a) any demand made of, or assertion of a right against, **You** which is communicated to **You** in writing; or
- (b) costs, fees, or expense, arising from a particular incident under insuring clauses under clauses 2.3, 2.4, 2.5, 2.6 or 2.7.

3.3 **"Document or Data"** means all and any records arising from **Your Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which **You** are legally responsible, whilst in **Your** custody, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **You** in the ordinary course of **Your Business**.



- 3.4 "Employee" means any person, other than **Your** partner, principal, director or member, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by **You**, or under any work experience or similar scheme, whilst employed or engaged by and under **Your** control in connection with **Your Business**.
- 3.5 "Endorsement" means a change in the terms and conditions of this policy agreed by **Us** that can extend or restrict cover.
- 3.6 "Extranet" means a restricted-access group of inter-connected networks accessible through service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.7 "Internet" means the worldwide group of inter-connected networks accessible through service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.8 "Intranet" means one or more inter-connected networks with restricted access to **You** through service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.9 "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).
- 3.10 "Period of Insurance" means the period stated in the **Schedule**.
- 3.11 "Premium" means the amount stated in the **Schedule**.
- 3.12 "Professional Staff" means those persons either qualified as architects, engineers, surveyors or quantity surveyors, or having other professional qualifications appropriate to **Your Business**, or having a minimum level of experience of five years in undertaking such work.
- 3.13 "Schedule" means the document entitled "**Schedule**" that attaches to and forms part of this policy.
- 3.14 "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.
- 3.15 "We / Us / Our" means XL Insurance Company SE.
- 3.16 "Wrongful Act" means any negligent act, negligent error, negligent omission or negligent breach of duty.
- 3.17 "You / Your" means any firm, company or limited liability partnership named as the Insured in the **Schedule**, including any of **Your** predecessors in business; **Your** principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 3.18 "**Your Business**" means the performance of and/or professional assistance with the following professional services in respect of activities for which **You** are qualified or technically experienced by **Professional Staff** on **Your** behalf:
- (a) design, specification, inspection, supervision of construction, feasibility study, surveying, and/or the provision of advice or technical information calculation; and/or
  - (b) such additional services as declared to and agreed by **Us**.



For the avoidance of doubt **Your Business** does not include:

- (i) inspection and/or supervision by **You** of **Your** own or **Your** sub-contractors' work where such supervision is undertaken in its capacity as building or engineering contractor; or
- (ii) the services of a clerk of works or similar person carrying out inspection and/or supervision of construction.

## 4 Limit of Liability

- 4.1 The limit of liability of this policy stated in the **Schedule** is the maximum amount **We** shall be called upon to pay under this policy irrespective of the number of **Claims**, claimants, losses or number of **Insureds**, including all defence costs and expenses under insuring clause 2.2.
- 4.2 In respect of insuring clauses 2.4, 2.5, 2.6, and 2.7 and where clauses 6.1 or 6.34 apply, an aggregate sub-limit of liability in the amount stated in the **Schedule** shall apply and this shall be the maximum amount **We** shall be called upon to pay under insuring clauses 2.4, 2.5, 2.6, or 2.7 or where clauses 6.1 or 6.34 apply.
- 4.3 All limits of liability and sub-limits of liability expressed in this policy or in the Schedule shall be inclusive of the payment of defence costs and expenses under insuring clause 2.2. Where an incident leading to a **Claim** under insuring clauses 2.4, 2.5, or 2.6 results in the payment of defence costs covered under insuring clause 2.2, **We** shall only be liable for such defence costs to the extent that there is any sub-limit remaining under insuring clauses 2.4, 2.5, or 2.6.
- 4.4 All payments made by **Us** in respect of any insuring clause, or any **Endorsement** or otherwise, shall erode the limit of liability for all **Claims** in the aggregate under this policy.
- 4.5 All **Claims** whether made against or sought by one or more of **You**, wholly or substantially arising from or having any connection with or relation to:
  - (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause, or
  - (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause, or
  - (c) 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 **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 **Claim**.

## 5 Deductible

- (a) A separate deductible being the first part of any **Claim** which is payable by **You** before **We** shall have any liability to reimburse under this policy shall apply to each and every **Claim**. Payment of the deductible by **You** is an important condition under this policy.
- (b) The deductible in respect of any **Claim** shall be in the amount stated in the **Schedule**, and shall be applicable to defence costs and expenses.



## 6 Exclusions

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

### 6.1 Asbestos

any actual or alleged liability whatsoever arising out of, resulting from or in consequence of, or in any way involving or connected with asbestos, or any materials containing asbestos in whatever form or quantity.

However, where liability arises directly from **Your** negligent act, negligent error or negligent omission and/or those of others acting on **Your** behalf and which arises out of the conduct of **Your Business**, this policy will reimburse **You** up to a maximum limit of liability stated in the **Schedule**, with defence costs and expenses as referred to in insuring clause 2.2 of the policy included within the limit of liability.

but provided always that:

- (i) no reimbursement shall be granted in respect of any damage to property other than that part of the building and/or structure which requires re-performance of **Your** work and/or rectification and/or remediation;
- (ii) no reimbursement shall be granted in respect of or arising out of any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or death;
- (iii) no reimbursement shall be granted in respect of asbestos inspections as set out in the Safety, Health, and Welfare at Work (Exposure to Asbestos) Regulations 2006 [S.I. No 386 of 2006].

### 6.2 Copyright

any passing-off or infringement of copyright, design right, registered design, trademark, trade name, patent, or any other intellectual property rights.

### 6.3 Date Recognition

any **Claim** concerning or connected with the performance or functionality of any computer system being affected by any changes, prior to, during and/or after the change of year, date or time in particular where such a **Claim** arises because of any failure to ensure that:

- (a) no value for current date will cause or give rise to any interruption in the operation of the computer system;
- (b) date based functionality and performance behaves consistently for dates prior to, during and/or after the change of year, date or time;
- (c) in all interfaces and data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules;
- (d) the computer system recognises a leap year.

### 6.4 Death or Bodily Injury

bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, unless caused directly by a breach of professional duty.



6.5 **Defective Workmanship**

any defective workmanship or materials relating to physical works of construction.

6.6 **Design Activities**

any claim arising from **Your** activities where it is, has been or would be declared as material facts that **You** have no responsibilities for design or other professionally-related activities.

6.7 **Director and Officer**

**Your** liability as a director, officer and/or trustee in **Your** respective capacities as a director, officer and/or trustee.

6.8 **Documents or Data**

any repair, replacement or reconstitution cost of any **Document or Data**, occasioned by any government or public or local authority action or order, or resulting from wear or tear (for example reduction in value through age, natural deterioration, ordinary use, depreciation due to use, damage by lack of maintenance or damage which happens gradually over a period of time), the action of vermin, gradual deterioration, or magnetic flux or loss of magnetism (except where caused by lightning).

6.9 **Employers Liability**

any breach of any obligation owed by **You** as an employer to any **Employee** or former **Employee** or applicant for employment.

6.10 **Estimates**

any estimate of probable design and/or construction costs being exceeded except where such estimate is compiled by a qualified quantity surveyor employed by or appointed on behalf of **You** to carry out those activities normally undertaken by a quantity surveyor in private practice.

6.11 **Fines and Penalties**

any regulatory or disciplinary investigations or proceedings (apart from the reimbursement provided under insuring clause 2.4) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages (including any additional damages under the the Copyright and Related Rights Act 2000 or any statutory successor to that Act), or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages.

6.12 **Fraud and Dishonesty**

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any of **Your** former or present partners, principals, directors, members, consultants or sub-contractors.

6.13 **Goods and Services**

any contract for the provision of goods or services to **You**.



6.14 **Information Technology**

any of the following:

- (a) the failure of any computer or other electronic processing device (except as provided under insuring clause 2.6) 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;
- (b) 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;
- (c) unauthorised access to **Your** computer system;
- (d) cyber vandalism; or
- (e) business conducted and/or transacted through the **Internet, Intranet, Extranet** and/or through **Your** own website, **Internet** site, web-address and/or through the transmission of electronic mail or documents by electronic means. This exclusion shall not apply if the liability to **You** would have attached in the absence of the fact that the business was conducted and/or transacted through the **Internet, Intranet, Extranet** and/or through **Your** own website, **Internet** site, web-address and/or through the transmission of electronic mail or documents by electronic means.

6.15 **Insolvency**

**Your** insolvency or bankruptcy.

6.16 **Insurance and Finance**

**Your** failure in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters.

6.17 **Jurisdiction and Territorial Limits**

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from **Your Business** undertaken outside the territorial limits shown in the **Schedule**.

6.18 **Known Claim or Circumstance**

any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to **You** prior to the **Period of Insurance**.

6.19 **Land and Vehicles**

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile) or that part of any building leased, occupied or rented by **You**.

6.20 **Libel, Slander or Defamation**

libel, slander or defamation.



6.21 **Market Fluctuation**

any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority.

6.22 **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.

6.23 **Other Insurance**

any matter in respect of which **You** are, or but for the existence of this policy would be, entitled to reimbursement under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the limit of liability as exceeds the limit of the other policy.

6.24 **Pollution and Contamination**

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example to material to be recycled, reconditioned or reclaimed) or contamination of any kind.

6.25 **Products**

any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on **Your** behalf, unless such **Claim** or circumstance is a direct result of **Your** negligent design and/or negligent specification or the negligent design and/or negligent specification of any **Employee** or any other person, firm or company directly appointed by and acting for or on **Your** behalf.

6.26 **Property Damage**

any damage to or destruction or loss of any property (except as provided under insuring clause 2.6) including loss of use, unless caused directly by a breach of professional duty.

6.27 **Radioactive Contamination and Explosive Nuclear Assemblies**

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.



6.28 **Related Companies**

any circumstance concerning, or **Claim** brought by or on **Your** behalf, or on behalf of any of **Your** parent or subsidiary company or any person having a financial, executive or controlling interest in **You** (unless either the financial interest is less than 5%, or the **Claim** made against **You** for an reimbursement or contribution is in respect of a **Claim** made by an independent third party), or by or on behalf of any entity controlled or managed by **You** or where **You** have greater than a 5% financial interest, or where **You** have accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred.

6.29 **Retroactive Date**

any act error or omission committed, or any loss suffered, or costs incurred, or any liability arising prior to the Retroactive Date specified in the **Schedule**.

6.30 **Single Projects**

any services provided by **You** in the ordinary course of **Your Business** in connection with any project where **You** have procured a professional liability insurance purporting to apply to such specific project.

6.31 **Tenders**

**Your** deliberate decision to tender for a contract at less than economic terms for commercial or goodwill reasons.

6.32 **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**.

6.33 **Toxic Mould**

any actual or alleged liability whatsoever arising out of or resulting from or in consequence of, or in any way involving;

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

Where liability arises directly from **Your** negligent act, negligent error or negligent omission and/or those of others acting on **Your** behalf and which arises out of the conduct of **Your Business**, this policy will reimburse **You** up to a maximum limit of liability stated in the **Schedule**, with defence costs and expenses as referred to in insuring clause 2.2 of the policy included within the limit of liability



6.34 **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.

6.35 **Warranties and Guarantees**

any:

- (a) contractual liability incurred by **You** in the course of **Your Business** arising from:
  - (i) **Your** acceptance or guarantee of, in any express contractual term, of fitness for purpose, or
  - (ii) any express guarantee given by **You** including as to the period of any project, or
  - (iii) any express contractual penalty made between **You** and a third party, or
  - (iv) **Your** acceptance of liability for liquidated damages
- (b) except where **Your** liability in respect of any of the above would have existed to the same extent in the absence of any such contractual term, or **We** have given **Our** prior express approval to the contractual term out of which the liability arises.
- (c) liability that arises in consequence of any assignment of a collateral warranty or duty of care agreement to more than two parties except in the case of a collateral warranty or duty of care agreement given to a financier or funding party (not a purchaser or tenant) where a total of three assignments is permissible

6.36 **Work Performed on Load Bearing Walls**

work performed on or relating to load bearing walls unless supervised by a qualified architect or structural engineer.

## 7 **Conditions**

7.1 **Claims 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:

- (a) of any **Claim** made against **You** or any person insured which is likely to fall within the scope of this policy;
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) of any circumstance of which **You** shall become aware which may reasonably give rise to a **Claim**;
- (d) of any circumstance of which **You** shall become aware which may reasonably give rise to an entitlement to be reimbursed under this policy;
- (e) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy.



**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 **Claim** then any subsequent **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](mailto:claims@angelriskmanagement.com)

## 7.2 **Duty to Cooperate**

It is an important condition to **Our** liability under this policy that **You** must provide to **Us** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where **You** have requested to be reimbursed under this policy and provide such co-operation and assistance as **We** and **Our** representatives, legal advisers or broker may require as soon as practicably possible. It is an important condition under this policy that **You** and any **Employee** (or any person, firm or company acting for **You** or on **Your** behalf) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

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.

## 7.3 **No Admission of Liability**

It is an important condition to **Our** liability under this policy that **You** (or any **Employee** or any person, firm or company acting for **You** or on **Your** behalf) shall not, without **Our** prior written approval; admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where **You** have requested to be reimbursed under this policy.

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.

## 7.4 **Adjudication and Decisions**

- (a) **You** agree that it will not in any circumstances, except with **Our** prior consent (such consent not to be unreasonably withheld), accept the decision of any Adjudicator as being final in the determination of the dispute under adjudication.
- (b) **You** agree that if requested by **Us** it will permit **Us** to pursue legal, arbitration or other proceedings in the name of and on behalf of **You** to challenge, appeal, open up or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the Adjudicator. **You** agree it will give all assistance requested of them by **Us** in relation to any such actions.



- (c) If **You** and **Us** cannot agree on a common course of action with regard to the pursuit of any legal proceedings (whether defence or prosecution) the dispute will be resolved by a sole arbitrator, to be mutually agreed between **Us** and **You** whose decision shall be binding. In the event of disagreement on the choice of arbitrator, the appointment shall be made by the Chairman for the time being of the Chartered Institute of Arbitrators. The costs of the dispute reference shall be allocated by the agreed or appointed arbitrator on a fair and equitable basis.

#### 7.5 Discharge of Policy Liability

**We** may at **Our** absolute discretion, at any time, after deduction of such sums as **We** have already paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which **You** are liable in respect of any **Claim** or circumstance, tender to **You**:

- (a) the remaining amount of the limit of liability available under this policy, or
- (b) such lesser amount for which **We** believe the **Claim** or circumstance can be settled (to include claimants' costs and interest)

and thereafter **We** will cease to have any further liability under this policy.

#### 7.6 Conduct of Claim

**We** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where **You** have requested to be reimbursed under this policy. **We** shall have full discretion in the handling thereof (despite any disputes that may have arisen between **You** and **Us** provided always that **You** shall not be obliged to defend any legal proceedings unless a Senior Counsel (to be mutually decided upon by **You** and **Us**) shall advise that such proceedings can be contested with a reasonable prospect of success.

#### 7.7 Subrogation

**We** shall be subrogated to all **Your** rights of recovery against any third party provided always that **We** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which reimbursement is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. **You** shall, without charge, provide such assistance as **We** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which **We** would become subrogated under this policy. **You** agree that at **Our** option, **We** may have the conduct of any proceedings to recover monies paid or payable by **Us**, whether or not **You** have an interest in such proceedings by reason of any uninsured losses.

#### 7.8 Cancellation

This policy will be cancelled in accordance with the Cancellation and Cooling off provisions 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) the suspension of payment of **Your** debts by **You** or any threat by **You** to do so or **You** entering 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 territorial limits.

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