



XL Insurance

Angel Risk Management

Policy Wording

Angel Information
Technology
Professional Liability
Insurance

Form TEC AOC 05/17



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1 Introduction

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 the 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 **We** can provide **Braille**, audio or large print versions of the policy and the associated documentation. If **You** require an alternative format **You** should contact **Your Broker** through whom this policy was arranged.

1.2 Fair Processing Notice

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

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

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

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

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



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

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

1.3 **Third Party Rights**

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

1.4 **Choice of Law**

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

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

1.5 **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 in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

1.6 **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.

1.7 **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**.

1.8 **Changes We Need to Know About**

You must tell **Us** within fourteen (14) days of **You** becoming 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.

1.9 **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.

1.10 **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.



1.11

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
20 Gracechurch Street
London
EC3V 0BG

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

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

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

Exchange Tower
London
E14 9SR

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

From within the United Kingdom

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

From outside the United Kingdom

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

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

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



1.12 **Financial Services Compensation Scheme**

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if **We** are unable to meet **Our** obligations under this policy. If **You** 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) and on their website: www.fscs.org.uk.

1.13 **Regulatory Information**

(a) **AXA XL Insurance Company UK Limited**

AXA XL Insurance Company UK Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 423308).

Registered office: 20 Gracechurch Street, London, EC3V 0BG.
Registered in England No. 5328622.

(b) **Angel Risk Management Limited**

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.
Registered in England No. 2942487.

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



2 Definitions

All the individual policy **Sections** are subject to the following definitions except where stated below.

- 2.1 **"Broker"** means insurance **Broker** insurance agent or intermediary who arranged this insurance on the Insured's behalf.
- 2.2 **"Claim"** means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing, or costs under clause 5.2(a).
- 2.3 **"Computer System"** means any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications systems, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers) firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communication system, world-wide web site, **Internet** site, **Intranet** site, **Extranet** site or web address(es).
- 2.4 **"Computer Virus"** means any unauthorised executable code that replicates itself through a Computer System or network with the intention of corrupting, manipulating or erasing computer records or damaging computer hardware whether termed a virus, logic bomb, worm, Trojan horse or known by any other name.
- 2.5 **"Deliverable"** means any hardware, firmware, peripherals, software, cabling or electronic equipment.
- 2.6 **"Document or Data"** means all and any records arising from the **Insured's 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 the Insured is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Insured's Business**.
- 2.7 **"Endorsement"** means a change in the terms and conditions of this policy that can extend or restrict cover.
- 2.8 **"Employee"** means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.
- 2.9 **"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.
- 2.10 **"Insured/ You/Your/Yourself"** means any firm, company or limited liability partnership named in the **Schedule**, including any of their predecessors in business; its 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.
- 2.11 **"Insured's Business"** means the professional services performed or the advice given by the **Insured** in relation to those activities declared in the **Proposal**, and as described in the **Schedule**.



- 2.12 "Insurer/We/Us/Our" means AXA XL Insurance Company UK Limited.
- 2.13 "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.
- 2.14 "Intranet" means one or more inter-connected networks with restricted access to the **Insured** 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.
- 2.15 "IT Services" means any services provided in the conduct of the **Insured's Business** relating to and in connection with any **Deliverable**, including but not limited to data processing, data warehousing, domain name registration, facilities management and outsourcing, systems analysis and design, telecommunications and data communication, website design and web hosting services.
- 2.16 "Notified" means that notice is sent in writing by the **Insured** (or its insurance **Broker**) to, and received by, the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance **Broker**).
- 2.17 "**Period of Insurance**" means the period stated in the **Schedule**.
- 2.18 "**Premium**" means the amount stated in the **Schedule**.
- 2.19 "**Proposal**" means the written information bearing the date stated in the **Schedule** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**. This does not include any information contained within or linked to the **Insured's** website unless such information is specifically supplied to the **Insurer** by or on behalf of the **Insured** in written form.
- 2.20 "**Schedule**" means the document entitled "**Schedule**" that relates to and forms part of this policy.
- 2.21 "**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 Exclusions

The **Insurer** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with:

3.1 **Known Claim or Circumstance**

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

3.2 **Death or Bodily Injury**

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person, unless caused directly by negligent advice, design, specification, formula or other breach of professional duty by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

3.3 **Property Damage**

any damage to or destruction or loss of any property (except as provided under insuring clause 5.2(a)) including loss of use, unless caused directly by negligent advice, design, specification, formula or other breach of professional duty by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

3.4 **Trading Losses**

any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf of the **Insured**;

3.5 **Fines and Penalties**

any regulatory or disciplinary investigations or proceedings or any fines, penalties or penal, punitive, exemplary, liquidated, restitutionary, non-compensatory or aggravated damages, or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages, except with regard to libel or slander;

3.6 **Fraud and Dishonesty**

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub-contractor of the **Insured**:

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission, or
- (b) in the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives, or
- (c) arising after the discovery of reasonable cause for suspicion of dishonesty or fraud by the dishonest or fraudulent person or persons, or



- (d) in the amount equivalent to:
- (i) any monies owed by the Insured to any person committing, condoning or contributing to the dishonest or fraudulent act or omission, and
 - (ii) any monies held by the Insured and belonging to such person,
 - (iii) any monies recovered in accordance with condition 4.4 of this policy;

3.7 **Director and Officer**

any liability of the **Insured** as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee;

3.8 **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;

3.9 **Asbestos**

any actual or alleged liability whatsoever directly or indirectly 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;

3.10 **Toxic Mould**

any actual or alleged liability whatsoever arising directly or indirectly 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;

3.11 **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 act of **Terrorism**. If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance is not covered by this policy the burden of proving the contrary shall be upon the **Insured**;

3.12 **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 material to be recycled, reconditioned or reclaimed) or contamination of any kind;

3.13 **Radioactive Contamination and Explosive Nuclear Assembly**

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;

3.14 **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);

3.15 **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 the **Insured's Business** undertaken outside the territorial limits shown in the **Schedule**;

3.16 **Contractual Liability**

- (a) any breach of any written contractual duty or duty of care owed by the **Insured** to any third party and which imposes a greater obligation upon the Insured than would otherwise be implied by common law or statute, other than as provided under insuring clause 5.1 (a), (b), (d) and (h);
- (b) from any contract where, before entering into or extending a contract, the **Insured** failed to take reasonable steps to ensure that it could fulfil all of its obligations in accordance with the terms of the contract or any representations made by or on behalf of the **Insured**.



3.17 **Related Companies**

any circumstance concerning, or **Claim** brought by or on behalf of, the **Insured** or any parent or subsidiary company of the **Insured**, or any person having a financial, executive or controlling interest in the **Insured** (unless the financial interest is less than 5%, or the **Claim** made against the Insured for 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 the Insured or where the Insured has greater than a 5% financial interest, or where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred;

3.18 **Joint Venture**

any association or joint venture conducted with any third party other than in respect of any **Claim** or circumstance arising from the **Insured's Business**, provided that such **Claim** or circumstance emanates from a wholly independent third party;

3.19 **Other Insurance**

any matter in respect of which the **Insured** is (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;

3.20 **Employers Liability**

any breach of any obligation owed by the **Insured** as an employer to any **Employee** or former **Employee** or applicant for employment;

3.21 **Goods and Services**

any contract for the provision of goods or services to the Insured or any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured** other than any **Deliverable** or **IT Services**;

3.22 **Patent**

any infringement of patent;

3.23 **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**;

3.24 **Insolvency**

the insolvency or bankruptcy of the **Insured**;

3.25 **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;



3.26 **Third Party Inherent Defect or Failure**

any inherent defect in any **Deliverable** supplied by a third party or the failure of a third party to supply any **Deliverable** or provide any service. However, this exclusion shall not apply if, in the Insurer's sole opinion, the **Insured** could make legal recovery under a written contract with such third party;

3.27 **Recall Costs**

any costs and expenses incurred in the refund, recall or replacement of any **Deliverable** or service provided. However, this exclusion shall not apply if, in the **Insurer's** sole opinion, the Insured could make legal recovery under a written contract with a third party;

3.28 **Restricted Recovery Rights**

that part of any **Claim** where the **Insured's** right of recovery against a third party has been restricted by the terms of any written contract entered into by the **Insured**;

3.29 **Computer Virus**

any **Computer Virus** created or modified by the Insured or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

3.30 **Internet Service, Telecommunications or Other Utility Provider**

any failure or loss of service provided by an internet service provider, telecommunications provider or other utility provider except where these services are provided by the **Insured** as part of the **Insured's Business**;

3.31 **Deliberate Acts**

any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**;

3.32 **Taxation, Competition, Restraint of Trade or Anti-trust**

any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation by the Insured.

3.33 **Data Protection**

any compensation, damages, losses, costs, expenses, fines, penalties or any other sum arising out of breach of privacy rules or legislation including the Data Protection Act 2018, whether **Your** liability arises directly or indirectly.

This exclusion does not apply to insuring clauses 5.1(g) and 5.7 Data Protection Act 2018.



4 Conditions

All the individual policy Sections are subject to the following conditions except where stated below

4.1 Notification

The **Insured** must be **Notified** by the **Insured** as soon as practicably possible:

- (a) of any **Claim** made against **Insured** 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 the **Insured** shall become aware which may reasonably be expected to give rise to a **Claim**;
- (d) of any circumstance of which the **Insured** shall become aware which may reasonably be expected to give rise to an entitlement to be reimbursed under this policy;
- (e) of an occurrence that may require representation at a properly constituted hearing, tribunal or proceeding, which may give rise to a **Claim**.

In the event that the **Insurer** is **Notified** during the Period of Insurance of any circumstance which in the **Insurer's** reasonable opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so Notified shall be deemed to have been made during the **Period of Insurance**.

Notification Address: Angel Risk Management Limited
Ground Floor
Marlborough House
Victoria Road South
Chelmsford
Essex
CM1 1LN
Tel No: 01245 343630
Email: claims@angelriskmanagement.com

4.2 Duty to Cooperate

The **Insured** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where the Insured has requested to be reimbursed under this policy and provide such co-operation and assistance as the **Insurer** and its representatives, legal advisers or **Broker** may reasonably require. It is an important condition under this policy that the Insured and any **Employee** (or any person, firm or company acting for or on behalf of the **Insured**) 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.



4.3 **No Admission of Liability**

As an important condition under this policy the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the **Insurer**; 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 the Insured has requested to be reimbursed under this policy.

4.4 **Dishonest or Fraudulent Claim Recovery**

Where a **Claim** or circumstance against the **Insured** involves the dishonest or fraudulent act or omission of any **Employee** of the **Insured**:

- (a) the **Insured** shall at the request and expense of the **Insurer** take all reasonable steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall not be repaid;
- (c) nothing in this policy shall preclude the **Insurer** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (d) no payment shall be made by the **Insurer** under this policy until after the final ascertainment of the amount of any recovery from the dishonest or fraudulent person or persons or their estates or legal representatives.

4.5 **Premium Payment**

- (a) The **Insured** undertakes that **Premium** will be paid in full to the **Insurer** within sixty days of inception of this policy (or, in respect of instalment **Premiums**, when due).
- (b) Where the **Premium** is to be paid through a London Market Bureau, payment to the **Insurer** will be deemed to occur on the day of delivery of a **Premium** advice note to the Bureau.

4.6 **Limit of Liability and Deductible**

(a) **Limit of Liability**

- (i) The limit of liability of this policy is the maximum amount the **Insurer** shall be called upon to pay under this policy in respect of:
 - (a) any one **Claim** under insuring clauses 5.1 (other than 5.1(i)), 5.2, 5.4, 5.5 and 5.6 with defence costs and expenses under insuring clause 5.3 in addition, and
 - (b) the aggregate of all **Claims** during the **Period of Insurance** under insuring clause 5.1(i) INCLUDING any defence costs and expenses under insuring clause 5.3.

The limit of liability available under sub-paragraph (b) is not in addition to the limit of liability available under sub-paragraph (a).



- (ii) The limit of liability in respect of any one **Claim** shall be the amount stated in the **Schedule**. In respect of insuring clause 5.1(i) an aggregate sub-limit of liability in the amount stated in the **Schedule** shall apply including all defence costs and expenses under insuring clause 5.3.
- (iii) All payments made by the **Insurer** in respect of clauses 5.1, 5.2, 5.4, 5.5 and 5.6 or any endorsement or otherwise (except for the payment under insuring clause 5.3 of defence costs and expenses for **Claims** under insuring clauses 5.1 (other than 5.1(i)) and 5.2(b) where such costs and expenses are payable in addition to the limit of liability) relating to the same **Claim** (as ascertained under clause iv below) shall erode the limit of liability in respect of any one **Claim** under this policy.
- (iv) It is agreed by the **Insured** that if a payment is required or made in settlement of any **Claim** or circumstance which exceeds the limit of liability available under this policy, the Insurer's liability for defence costs and expenses shall be limited to such proportion as the amount of the limit of liability available in respect of such **Claim** or circumstance bears to the amount required or paid in settlement and the **Insured** hereby agrees to make any consequent repayment due to the **Insurer** immediately upon demand, failing which the **Insurer** will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them under this policy.
- (v) All **Claims** (including costs sought under insuring clause 5.2(a)) whether made against or sought by one or more **Insured**, 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 deemed to be one **Claim** or single application for costs under insuring clause 5.2(a) for the purposes of deciding the applicable limit of liability and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

(b) **Deductible**

- (i) A separate deductible being the first part of any **Claim** which is payable by the **Insured** before the **Insurer** shall have any liability to reimburse under this policy shall apply to each and every **Claim**. Payment of the deductible by the **Insured** is an important condition under this policy.
- (ii) The deductible in respect of any **Claim** shall be in the amount stated in the **Schedule**, and shall not be applicable to defence costs and expenses.



4.7 **Subrogation**

Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** 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**. The **Insured** shall, without charge, provide such assistance as the Insurer may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which the Insurer would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the Insurer, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses.

4.8 **Discharge of Policy Liability**

The **Insurer** may in its absolute discretion, at any time, after deduction of such sums as they may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which the **Insured** is liable in respect of any **Claim** or circumstance, tender to the **Insured**:

- (a) the remaining amount of the limit of liability available under this policy, or
- (b) such lesser amount for which the **Insurer** believes the **Claim** or circumstance can be settled (to include claimants' costs and interest) and thereafter the **Insurer** will cease to have any further liability under this policy.

4.9 **Conduct of Claim**

The **Insurer** 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 the **Insured** has requested to be reimbursed under this policy. The **Insurer** shall have full discretion in the handling thereof (despite that a dispute may have arisen between the **Insurer** and the **Insured**) provided always that the **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

4.10 **Avoidance by Insurer**

If the **Insurer** is entitled, for any reason, to avoid this policy from inception, the **Insurer** may at its absolute discretion elect instead to give notice to the **Insured** that it regards this policy as being in full force and effect, except that no reimbursement will be given under this policy that arises from or is related to the grounds that entitled the **Insurer** to avoid this policy.

4.11 **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 the **Insured** 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 the **Insured's** assets;



- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of composition with its creditors by the Insured;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the Insured may be domiciled or any territory within the territorial limits. For the purpose of this condition alone the **Insured** shall mean only the firm or company named in the **Schedule**.

4.12 **Rectification of Defects**

As an important condition under this policy the **Insured**, at their own expense, will take reasonable steps to remedy and/or rectify any defect or failure in any **Deliverable** or service supplied by the **Insured** to a client arising prior to the clients acceptance of the **Deliverable** or within 180 days of acceptance or any longer period specified in any contract between the **Insured** and the client, including a maintenance contract.

4.13 **Availability of Source Code Material**

As an important condition the right to be reimbursed under this policy the **Insured** will maintain a current and accurate copy of the source code material being the source code and object code owned by the **Insured** or under its absolute control and comprised within the **Deliverable** or any product or service provided by the **Insured** in the course of the **Insured's Business**, together with encryption keys, locks or passwords, or any other documentation relating to such software, which is or may be required for the understanding, maintaining, modifying or correcting of the software. In the event of a **Claim** against the **Insured** the **Insured** will, as soon as practicably possible on demand by the **Insurer** provide to them such copy of the source code material for the exclusive purpose of mitigating and/or determining any loss or liability.

4.14 **Protection of Computer Systems**

As an important condition under this policy the **Insured** shall take reasonable measures to maintain and upgrade software which protects against any unauthorised use or access to the **Insured's Computer System** or internet web site, and to take regular back-up copies of any data, file or programme.



5 Insuring Clauses

5.1 Civil Liability

The **Insurer** shall reimburse the **Insured** in respect of any civil liability (including claimant's costs) arising from any **Claim** first made against the Insured and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Insured's Business** by reason of:

- (a) any unintentional breach of duty to use reasonable care and skill by any person, firm or company directly appointed by and acting for or on behalf of the **Insured** where the **Insured** has assumed liability for such a breach in a written contract;
- (b) negligence or breach of an express or implied contractual duty to use reasonable care and skill by the **Insured** or by any **Employee**;
- (c) negligent misstatement or negligent misrepresentation by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the Insured;
- (d) any unintentional breach of a written contract in the design, production or supply of any **Deliverable** or **IT Services** due to:
 - (i) the **Deliverable** or **IT Services** not conforming in all material respects with any written specification incorporated into the relevant contract and where it is an express term of the contract that the **Deliverable** or **IT Services** must comply with that specification;
 - (ii) the existence of any material defects in the **Deliverable** or **IT Services**;
 - (iii) the failure of the **Deliverable** or **IT Services** to meet any implied statutory term as to quality, fitness or safety;
- (e) libel or slander committed unintentionally by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (f) any dishonest or fraudulent act or omission on the part of any **Employee**;
- (g) any unintentional breach of confidentiality or any right to privacy or **Data Protection Regulations** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (h) any unintentional infringement of intellectual property rights including where the **Insured** has assumed liability for such an infringement in a written contract, committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the Insured, other than rights concerning patent;
- (i) any unintentional transmission of a **Computer Virus** by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (j) any other civil liability.



5.2 **Loss of Documents or Data**

The **Insurer** shall reimburse the **Insured** for:

- (a) costs, incurred with the Insurer's prior written consent, of repair, replacement or reconstitution of, and
- (b) any settlement, damages, interest and claimant's costs arising from a **Claim** involving 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**.

5.3 **Defence Costs and Expenses**

The **Insurer** shall reimburse the **Insured** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under clauses 5.1, 5.2(b) or 5.4; or
- (b) the investigation of any circumstance **Notified** to the **Insurer** under condition 4.1 which may give rise to a **Claim**,

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

5.4 **Payment of Outstanding Fees**

The **Insurer** shall reimburse the **Insured** in respect of any **Claim** first **Notified** by the **Insured** during the **Period of Insurance** relating to amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal by a client to pay for work undertaken by the **Insured** where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a **Claim** in excess of the amount owed. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** agrees to pay the amount owed if, at their sole discretion, they consider that a legitimate **Claim** for a greater amount will be avoided. If a **Claim** subsequently arises then the amount paid under this insuring clause will be deducted from the limit of liability. If the **Insured** eventually recovers the amount owed then the amount paid by the **Insurer** must be repaid less the **Insured's** expenses incurred in such recovery.

5.5 **Witness Attendance**

The **Insurer** will pay to or reimburse the **Insured** the cost of attendance at any Court, Arbitration or Adjudication hearing by the **Insured**, including any **Employee** or any other relevant party (but not including expert witnesses) in the event that the legal advisers acting on behalf of the **Insured** require such attendance, provided that the **Insurer** has given its prior written consent to such attendance, as a witness of fact in connection with a **Claim** made against the **Insured** 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) any principal, partner, member or director of the Insured GBP 200.00
- (b) any **Employee** GBP 100.00
- (c) any other relevant party up to GBP 200.00



5.6 **Legal Representation Cost**

The **Insurer** will pay on behalf of the **Insured** all costs and expenses incurred by the **Insured** during the **Period of Insurance** with the prior written consent of the **Insurer** for representation at properly constituted hearings, tribunals or proceedings arising out of any **Claim** first made during the **Period of Insurance** in respect of the conduct of the **Insured's Business** by the **Insured** which may be or may become the subject of reimbursement under this policy which are otherwise not reimbursed under insuring clause 5.3.

5.7 **Data Protection Act 2018**

Subject to the policy terms, exclusions and conditions this policy, **We** shall cover **You** for legal liability in respect of any **Claim** for compensation as a result of injury and/or damage under Section 168 of the Data Protection Act 2018.

Cover in respect of such **Claims** shall be available only under the terms and conditions of this extension and nowhere else in this policy.

For the purposes of this extension non-material damage which is the subject of such **Claim** shall be considered as injury and will be treated as having occurred when the claimant first had knowledge or alleges that they had knowledge of the event giving rise to that injury.

This extension applies where **Claims** are made against **You** during the **Period of Insurance** arising from injury and/or damage occurring on or after the Retroactive Date specified in the **Schedule** and before the expiry date of the policy. If a circumstance occurring subsequent to the Retroactive Date and before the expiry date of the policy is notified to **Us** in accordance with Condition 4.1 –Notification, **We** will not deny any subsequent **Claim** arising out of that circumstance solely because the **Claim** was made after the expiry date of the policy.

Our liability under this extension shall be limited to GBP 50,000 any one occurrence and in the aggregate, inclusive of defence costs, which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

The excess under this extension shall be 10% of each **Claim** subject to a minimum of GBP 1,000 and shall be applicable to defence costs.

Additional Exclusions

This extension shall not provide cover:

- (a) against liability caused by or arising from a deliberate act by or omission of any person entitled to insurance under this policy if the result could have been expected having regard to the nature and circumstances of such act or omission;
- (b) for the costs of replacing, reinstating, rectifying or erasing any Personal Data, as defined in Data Protection Act 2018;
- (c) against liability caused by or arising from the recording, processing or provision of data for reward or the determining of the financial status of a person; or
- (d) against liability which attaches by virtue of a contract or agreement but which would not have attached in the absence of such contract or agreement.

Fee Payment Condition

We shall be entitled to refuse to pay any **Claim** under this policy in its entirety if **You** have not paid any fees required to be paid by any data protection authority.



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