



X^L Insurance

Policy Wording



Policy

Information Technology Professional Liability Insurance

**Any One Claim
Defence Costs and Expenses In Addition**

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

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

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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:

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

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

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

- (1) give **You** thirty (30) days' notice that **We** are terminating this policy; or
- (2) give **You** notice that **We** will treat this policy and any future **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

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

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

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

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

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

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



1.15 United Kingdom Financial Services Compensation Scheme

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

1.16 Regulatory Information

(a) XL Insurance Company SE

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

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

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

(b) XL Catlin Services SE

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

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

(c) Angel Risk Management

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

Registered office: 20 Gracechurch Street, London, EC3V 0BG, United Kingdom.
Registered in England No. 2942487.

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

1.17 Fair Processing Notice

This Privacy Notice describes how XL Insurance Company SE (for the purpose of this notice "**we**", "**us**" or the "**Insurer**") collect and use the personal information of insureds, claimants and other parties (for the purpose of this notice "**you**") when **we** are providing **our** insurance and reinsurance services.

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



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

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

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

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

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

2 Insuring Clauses

2.1 Civil Liability

We shall reimburse **You** in respect of any civil liability (including 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:

- (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 **Your** behalf where **You** have 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 **You** or by any **Employee**;
- (c) negligent misstatement or negligent misrepresentation by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (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 **You** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (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 **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (h) any unintentional infringement of intellectual property rights including where **You** have assumed liability for such an infringement in a written contract, 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, other than rights concerning patent;
- (i) any unintentional transmission of a **Computer Virus** by **You** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (j) any other civil liability.

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 **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**.

2.4 **Payment of Outstanding Fees**

We shall reimburse **You** in respect of any **Claim** first **Notified** by **You** during the **Period of Insurance** relating to amounts owed to **You**, including amounts legally owed by **You** to sub-contractors or suppliers, due to the refusal by a client to pay for work undertaken by **You** 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, **We** agree to pay the amount owed if, at **Our** sole discretion, **We** 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 **You** eventually recover the amount owed then the amount paid by **Us** must be repaid less **Your** expenses incurred in such recovery.



2.5 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 |

2.6 Legal Representation Cost

We will pay on **Your** behalf all costs and expenses incurred by **You** during the **Period of Insurance** with **Our** prior written consent 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 **Your Business** which may be or may become the subject of reimbursement under this policy which are otherwise not reimbursed under insuring clause 2.2.

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; and/or
- (b) costs, fees, or expense arising from a particular incident under insuring clauses 2.3, 2.4, 2.5 or 2.6.

3.3 "**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).

3.4 "**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.

3.5 "**Data Protection Regulations**" means any privacy laws, statutes and regulations associated with the control and use of personal data, including but not limited to the Data Protection Act 1988, and the Privacy and Electronics Communications (EC Directives) Regulations 2003.

3.6 "**Deliverable**" means any hardware, firmware, peripherals, software, cabling or electronic equipment.



- 3.7 "**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**.
- 3.8 "**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**.
- 3.9 "**Endorsement**" means a change in the terms and conditions of this policy agreed by **Us** that can extend or restrict cover.
- 3.10 "**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.
- 3.11 "**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.
- 3.12 "**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.
- 3.13 "**IT Services**" means any services provided in the conduct of **Your 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.
- 3.14 "**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).
- 3.15 "**Period of Insurance**" means the period stated in the **Schedule**.
- 3.16 "**Premium**" means the amount stated in the **Schedule**.
- 3.17 "**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 **Us** by or on **Your** behalf. This does not include any information contained within or linked to **Your** website unless such information is specifically supplied to **Us** by or on **Your** behalf in written form.
- 3.18 "**Schedule**" means the document entitled "**Schedule**" that attaches to and forms part of this policy.
- 3.19 "**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.
- 3.20 "**We / Us / Our**" means XL Insurance Company SE.



- 3.21 "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.
- 3.22 "**Your Business**" means the professional services performed or the advice given by **You** in relation to those activities declared in the **Proposal**, and as described in the **Schedule**.

4 Limit of Liability

- 4.1 Except in relation to insuring clause 2.1(i), the limit of liability of this policy referred to in the **Schedule** is the maximum amount **We** shall be called upon to pay under this policy in respect of any one **Claim** but with defence costs and expenses under insuring clause 2.2 in addition, irrespective of the number of claimants or firms, companies or limited liability partnerships named as the **Insured** in the Schedule.
- 4.2 In respect of **Claims** under insuring clause 2.1(i), an aggregate sub-limit of liability (not in addition to the limit of liability referred to in clause 4.1 above) for all such **Claims** 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 clause 2.1(i). Such sub-limit shall also include defence costs and expenses payable under clause 2.2 in respect of such **Claims**.
- 4.3 All payments made by **Us**, or any **Endorsement** or otherwise (except for the payment under insuring clause 2.2 of defence costs and expenses other than in respect of insuring clause 2.1(i)) relating to the same **Claim** (as ascertained under clause 4.5 below) shall erode the limit of liability in respect of any one **Claim** under this policy.
- 4.4 If a payment is required or made in settlement of any **Claim** or circumstance which exceeds the limit of liability available under this policy, **Our** liability for defence costs and expenses under insuring clause 2.2 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 **You** hereby agree to make any consequent repayment due to **Us** immediately upon demand, failing which **We** will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them 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** or application for costs.



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 not 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:

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.

6.2 Computer Virus

any **Computer Virus** created or modified by **You** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on **Your** behalf.

6.3 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 in absence of contract, other than as provided under insuring clause 2.1 (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**.

6.4 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 **You** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on **Your** behalf.

6.5 Deliberate Acts

any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by **You**.

6.6 Director and Officer

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



6.7 **Employers Liability**

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

6.8 **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.

6.9 **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

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission, or
- (b) in the amount 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 **You** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission, and
 - (ii) any monies held by **You** and belonging to such person,
 - (iii) any monies recovered in accordance with condition 7.4 of this policy.

6.10 **Goods and Services**

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

6.11 **Insolvency**

Your insolvency or bankruptcy.

6.12 **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 **You** as part of **Your Business**.



6.13 **Joint Venture**

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

6.14 **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**.

6.15 **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**.

6.16 **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).

6.17 **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.

6.18 **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.



6.19 **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.

6.20 **Patent**

any infringement of patent.

6.21 **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.

6.22 **Property Damage**

any damage to or destruction or loss of any property (except as provided under insuring clause 2.3) including loss of use, unless caused directly by negligent advice, design, specification, formula or other breach of professional duty by **You** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on **Your** behalf.

6.23 **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.

6.24 **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 **Our** sole opinion, **You** could make legal recovery under a written contract with a third party.

6.25 **Related Companies**

any circumstance concerning, or **Claim** brought by or on behalf of, **You** or **Your** parent or subsidiary company, or any person having a financial, executive or controlling interest in **You** (unless the financial interest is less than 5%, or the **Claim** made against **You** 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 **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.

6.26 **Restricted Recovery Rights**

that part of any **Claim** where **Your** right of recovery against a third party has been restricted by the terms of any written contract entered into by **You**.

6.27 **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**.



6.28 **Taxation, Competition, Restraint of Trade or Anti-Trust**

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

6.29 **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**.

6.30 **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.

6.31 **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.

6.32 **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 **Our** sole opinion, **You** could make legal recovery under a written contract with such third party.

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 hearing, tribunal or proceeding, which may give rise to a **Claim**.

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

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 Dishonest or Fraudulent Claim Recovery

Where a **Claim** or circumstance against **You** involves the dishonest or fraudulent act or omission of any of **Your Employees**:

- (a) **You** shall at **Our** request and expense take all practical 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 **You** or any monies of such persons held by **You** shall not be repaid;
- (c) nothing in this policy shall preclude **Us** 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 **Us** 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.

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 **Avoidance by Us**

If **We** are entitled, for any reason, to avoid this policy from inception, **We** may at **Our** absolute discretion elect instead to give notice to **You** that **We** regard 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 **Us** to avoid this policy.

7.9 **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**.

7.10 **Rectification of Defects**

It is an important condition to **Our** liability under this policy that **You**, at **Your** own expense, will take all practical steps to remedy and/or rectify any defect or failure in any **Deliverable** or service supplied by **You** 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 **You** and **Your** client, including a maintenance contract.

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

7.11 **Availability of Source Code Material**

It is an important condition to **Our** liability under this policy that **You** will maintain a current and accurate copy of the source code material being the source code and object code owned by **You** or under **Your** absolute control and comprised within the **Deliverable** or any product or service provided by **You** in the course of **Your 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 **You**, **You** will, as soon as practicably possible on **Our** demand provide to **Us** such copy of the source code material for the exclusive purpose of mitigating and/or determining any loss or liability.

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



7.12 **Protection of Computer Systems**

It is an important condition to **Our** liability under this policy that **You** shall take all practical measures to maintain and upgrade software which protects against any unauthorised use or access to **Your Computer System** or **Internet** web site, and to take regular back-up copies of any data, file or programme.

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.