



 Insurance

Policy Wording



Policy

Trustee Liability with Optional Extensions Directors and Officers Liability Insurance

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

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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.

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



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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 Data Protection Act 1988

Any information provided to **Us** regarding **You**, any person insured or any **Employee** will be processed by **Us**, in compliance with the provisions of the Data Protection Act 1988, or any amending legislation, for the purpose of providing insurance and handling claims or complaints, if any. This may necessitate providing such information to third parties.

1.3 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.

1.4 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.

1.5 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.

1.6 Government Charges

The first premium includes any such charges.

1.7 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.



1.8 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.

1.9 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

1.10 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.

1.11 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**.

1.12 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.



1.13 **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.

1.14 **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.

1.15 **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>

1.16 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

1.17 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.



2 Insuring Clauses

2.1 **We** will pay on behalf of:

(a) **Trustee's Liability**

the **Trustee** all **Loss** that the **Trustee** is legally liable to pay;

(b) **Your Reimbursement**

(i) **You** any **Loss** that **You** are legally required or permitted to pay the **Trustee** as advancement or reimbursement;

(ii) **You** any such **Criminal Prosecution Defence Costs** that **You** are legally required or permitted to pay the **Trustee** as advancement or reimbursement;

for a **Claim** against the **Trustee** arising from a **Wrongful Act** or an **Employment Practices Wrongful Act** provided that the **Claim** is first made against the **Trustee** during the **Period of Insurance** or **Discovery Period** if applicable and **Notified** to **Us** during the **Period of Insurance**.

2.2 **We** will pay on behalf of the **Trustee**:

(a) **Defence Costs** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under Insuring Clause 2.1;

(b) **Defence Costs** in the investigation of any circumstance(s) notified to **Us** under Condition 10.1 – Claims Notification which is (or are) likely to give rise to a **Claim** which could reasonably be covered under Insuring Clause 2.1;

(c) **Defence Costs** in the defence or investigation of an **Identity Theft Claim**;

(d) **Investigation Costs**;

(e) **Criminal Prosecution Defence Costs**;

(f) **Pollution Defence Costs**;

(g) **Extradition Proceedings Defence Costs**;

(h) **Asset and Liberty Proceedings Defence Costs**;

(i) **Public Relations Costs**.

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 **"Asset and Liberty Proceedings"** means any proceeding brought against the **Trustee** by any body (including the Charities Commission or equivalent in any other covered jurisdiction) other than **You**, so authorised for the purpose of examining **Your** affairs or the conduct of the **Trustee** in their capacity as such, seeking:

(a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of a **Trustee**;

(b) a charge over real property or personal assets of such **Trustee**;



- (c) a temporary or permanent prohibition on such **Trustee** from holding the office of or performing the function of a **Trustee**;
- (d) a restriction of such **Trustee's** liberty to a specified domestic residence or an official detention;
- (e) deportation of a **Trustee** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Trustee's** conviction of a crime.

3.3 **"Asset and Liberty Proceedings Defence Costs"** means **Defence Costs** incurred by the **Trustee** in dealing with an **Asset and Liberty Proceeding**, provided that such proceeding is commenced during the **Period of Insurance** and **Notified to Us** during the **Period of Insurance**.

3.4 **"Claim"** means any demand made for compensation or damages from, or an allegation of a right against a **Trustee** or, under the Optional Extensions, if applicable, **You**, which is communicated to the **Trustee** or **You**, as applicable.

All **Claims** related or connected in any way by reference to any common contributory factor or characteristic shall be treated as a single **Claim**, provided that all such **Claims** are **Notified** during the **Period of Insurance** or the **Discovery Period** if applicable.

3.5 **"Criminal Prosecution Defence Costs"** means **Defence Costs** incurred by the **Trustee**, or under the Optional Extensions, if applicable, **You**, in defending any criminal investigations or proceedings commenced during the **Period of Insurance** and **Notified to Us** during the **Period of Insurance** and brought against the **Trustee** or **You**, as applicable, by any government body for any **Wrongful Act** including gross breach of duty of care that causes the death of another person and proceedings under the Prevention of Corruption Acts 1889 to 2010 or the equivalent in any other covered jurisdiction.

3.6 **"Defence Costs"** means costs, fees and expenses incurred by or on behalf of a **Trustee** or, under the Optional Extensions, if applicable, **You**, with **Our** written consent.

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

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

3.7 **"Discovery Period"** means the period of twelve (12) or twenty-four (24) months immediately following the expiry of the **Period of Insurance** during which written notice may be given to **Us** of a **Wrongful Act** committed (or alleged to have been committed) prior to the expiry of the **Period of Insurance**.

3.8 **"Documents or Data"** means all and any records 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, which are **Your** property or are in **Your** care custody or control.

3.9 **"Employee / Employment"** means any:

- (a) person under a contract of service or apprenticeship with **You**;
- (b) labour only sub-contractor and persons supplied by them;
- (c) person employed by labour only sub-contractors;
- (d) self-employed person;



- (e) person hired to or borrowed by **You**;
- (f) person undertaking study or work experience, voluntary work or a youth training scheme with **You**;

working for **You** and under **Your** control in connection with **Your** business provided they are not acting as a **Trustee**.

3.10 **"Employment Practices Wrongful Act"** means any actual or alleged:

- (a) discrimination with respect to the terms or conditions of **Employment** on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
- (b) harassment, including unwelcome sexual or non-sexual advances, requests for sexual favours and any unwelcome verbal or physical contact of a sexual or non-sexual nature which:
 - (iv) is explicitly or implicitly made a term or condition of **Employment**; or
 - (v) creates a hostile or offensive working environment for an **Employee**; or
 - (vi) when rejected or opposed by a person becomes a basis for decisions regarding that person's **Employment**;
- (c) defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for employment, professional reputation, disciplinary history or termination of **Employment**;
- (d) unfair or constructive dismissal of an **Employee** (or the equivalent in any other jurisdiction) or refusal to hire or promote an **Employee**;
- (e) adverse change in the terms and conditions of a person's **Employment** in retaliation for that person's exercise of their rights under law, or support of the rights of another.

3.11 **"Endorsement"** means a change in the terms and conditions of this policy agreed by **Us** that can extend or restrict cover.

3.12 **"Extradition Notice"** means:

- (a) any request for the extradition of any **Trustee**, any warrant for the arrest of any **Trustee** or other proceedings under the provisions of the Extradition Act 1965 or the European Arrest Warrant Act 2003;
- (b) any associated appeal, including an appeal to the European Court of Human Rights, and the pursuit of judicial review proceedings against the decision of an appropriately authorised representative of the government of the Republic of Ireland to issue an extradition certificate under the Extradition Act 1965 or the European Arrest Warrant Act 2003;
- (c) the equivalent of the above in any other jurisdiction;

arising from a **Wrongful Act**.

3.13 **"Extradition Proceedings Defence Costs"** means **Defence Costs** incurred by the **Trustee** in dealing with an **Extradition Notice**, provided the **Extradition Notice** is first served on the **Trustee** during the **Period of Insurance** and **Notified** to **Us** during the **Period of Insurance**.



3.14 **"Identity Theft Claim"** means any **Claim** for damages first made by a third party against the **Trustee** or, under Optional Extension – Organisational and Professional Liability, if applicable, **You**, to enforce an agreement entered into with another person fraudulently representing themselves as a **Trustee** or **You**, as applicable, in connection with **Your** business and **Notified to Us** during the **Period of Insurance**.

3.15 **"Investigation"** means any formal request for information from a **Trustee**, or under the Optional Extensions, if applicable, **You**, or for the **Trustee's** or **Your** attendance, at an interview, which is made by any body other than **You**, so authorised for the purpose of examining **Your** affairs or the conduct of the **Trustee** in their capacity as such

For the avoidance of doubt, an **Investigation** does not include a risk management visit or equivalent by **Your** regulator.

3.16 **"Investigation Costs"** means **Defence Costs** incurred by the **Trustee**, or under the Optional Extensions, if applicable, **You**, in an **Investigation**, provided the **Investigation** is initiated during the **Period of Insurance** and **Notified to Us** during the **Period of Insurance**.

3.17 **"Loss"** means any award of compensatory damages made by a competent court or tribunal including third party costs or any settlement incurred with **Our** prior written consent.

Loss does not include:

- (a) **Trustee** or **Employee** remuneration, benefits, stock or share options or severance payments; or
- (b) taxes, fines or civil, regulatory or criminal penalties; or
- (c) punitive, aggravated or exemplary damages; or
- (d) in respect of any **Employment Practices Wrongful Act**:
 - (i) any salary or wages earned while in **Your Employment**; or
 - (ii) any **Employment** related benefits to which the claimant would have been entitled has the **Trustee** or **You** provided the claimant with a continuance, reinstatement or commencement of **Employment**; or
 - (iii) contractual damages based upon the terms of a contract of **Employment**; or
 - (iv) any liability or costs incurred to modify any building or property in order to make such a building or property more accessible or accommodating to any disabled person.

3.18 **"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).

3.19 **"Outside Trustee"** means any **Trustee** acting in the capacity of a trustee, committee member, governor or director formally appointed on **Your** written authority and request to the board or equivalent position in any organisation in which **You** hold a shareholding, any not-for-profit entity, any entity which has been specified in the **Schedule** or any other entity which has been agreed to in writing by **Us** other than:

- (a) **You**; or



- (b) any entity that:
 - (i) has its securities listed or traded on any exchange; or
 - (ii) possesses any tangible asset located within the USA and/or Canada.
- 3.20 **"Pension/Employee Benefit Scheme"** means a money purchase (defined contribution) pension or employee benefit scheme which is registered in the Republic of Ireland and governed by the laws of the Republic of Ireland.
- 3.21 **"Period of Insurance"** means the period stated in the **Schedule**.
- 3.22 **"Pollution"** means any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including for example smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example material to be recycled, reconditioned or reclaimed) or contamination of any kind of the atmosphere or of any water, land, buildings or other tangible property.
- 3.23 **"Pollution Defence Costs"** means **Defence Costs** incurred in relation to any **Claim** first made during the **Period of Insurance**, against the **Trustee** in their capacity as such or, under Optional Extension – Organisational and Professional Liability, if applicable, **You**, involving any **Pollution** and **Notified to Us** during the **Period of Insurance**.
- 3.24 **"Professional Liability Wrongful Act"** means **Loss** that **You** are legally liable (directly or vicariously) to pay for **Claims** arising out of professional advice given or services performed on **Your** behalf by reason of:
 - (a) an **Wrongful Act** committed by **You** or by any **Employee**, or by any other person, organisation or company directly appointed by **You** and acting for or on **Your** behalf; or
 - (b) any dishonest or fraudulent act or omission on the part of any **Employee**; or
 - (c) libel or slander committed unintentionally by **You** or by any **Employee**; or
 - (d) any unintentional breach of confidentiality committed by **You** or by any **Employee**, or by any other person, organisation or company directly appointed by **You** and acting for or on **Your** behalf.
- 3.25 **"Public Relations Expenses"** means the fees, costs and expenses of the public relations consultants incurred by
 - (a) a **Trustee** from a **Claim** first made against the **Trustee**, in their capacity as such during the **Period of Insurance**, and which **Claim** falls to be dealt with under Insuring Clause 2.1; or
 - (b) **You**, from a **Claim** first made against **You** during the **Period of Insurance** and which **Claim** falls to be dealt with under Optional Extension – Organisational and Professional Liability, if applicable;with **Our** prior written consent to be given at **Our** absolute discretion where **We** are satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **Trustee's** or **Your** reputation
- 3.26 **"Schedule"** means the document entitled **"Schedule"** that attaches to and forms part of this policy.



3.27 **"School, Charity or Charitable Organisation"** means:

- (a) a place or institution for teaching or learning; or
- (b) a body registered with the Charities Commission; or
- (c) a voluntary organisation which does not distribute its surplus funds to owners or shareholders, but instead uses them for the benefit of its members or charitable purposes;

in the Republic of Ireland.

3.28 **"Subsidiary"** means a company in which **You**, as at the date of inception of this policy:

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

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

3.29 **"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.

3.30 **"Trustee"** means:

- (a) any natural person who is, was, or becomes a **Your** trustee, committee member, governor or director or officer during the **Period of Insurance** or holds any equivalent position in any jurisdiction;
- (b) any natural person who is, was, or becomes **Your Employee** during the **Period of Insurance**:
 - (i) acting at **Your** specific prior written request in the capacity of **Outside Trustee**; or
 - (ii) acting in a managerial or supervisory capacity; or
 - (iii) named as co-defendant with any trustee or director or officer; or
- (c) any trustee's, committee member's, governor's or director or officer's lawful spouse or civil partner as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 where in receipt of a **Claim** because of the **Wrongful Act** of the trustee; or
- (d) the estate, heirs, legal representatives or assigns of any person within (a) or (b) above.

All references to trustee apply equally to non-executive and executive trustees.

It does not include any person acting in their capacity as administrator, liquidator, external auditor, receiver or administrative receiver.



- 3.31 **"We / Us / Our"** means XL Insurance Company SE.
- 3.32 **"Wrongful Act"** means any actual or alleged act, error, omission, misstatement, misleading statement, defamatory statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by:
- (a) a **Trustee** acting in their capacity as:
 - (i) **Your** trustee or director or officer; or
 - (ii) **Your** trustee or director or administrator of a **Pension/Employee Benefit Scheme**; or
 - (b) **You** under the Optional Extensions, if applicable.
- 3.33 **"You / Your"** means the company/companies stated in the **Schedule** and its/their **Subsidiaries** but excluding any firm or company acting in their capacity as liquidator, external auditor, receiver or administrative receiver.

4 Limit of Liability

- 4.1 The limit of liability of this policy is the maximum amount **We** shall be called upon to pay under this policy in respect of any one **Claim** under any insuring clause or extension other than Optional Extension – Organisational and Professional Liability, if applicable, Optional Extension – Employment Practices Liability, if applicable, and Extension 8.6 – Retirement Run-Off.

- 4.2 The limit of liability shall be the amount stated in the **Schedule**.

In respect of:

- (a) Optional Extension – Organisational and Professional Liability, if applicable, the Organisational Aggregate Limit set out in the **Schedule** is the aggregate amount payable by **Us** under this Extension and in respect of all **Claims Notified** to **Us** during the **Period of Insurance** (including any **Discovery Period**) irrespective of the number of **Claims** and/or the number of claimants. All inner or sub-limits in this Extension forms part of and, where paid, shall erode the Organisational Aggregate Limit;
- (b) Optional Extension – Employment Practices Liability, if applicable, the Employment Practices Limit set out in the **Schedule** is the aggregate amount payable by **Us** under this Extension in respect of all **Claims** and **Loss Notified** to **Us** during the **Period of Insurance** irrespective of the number of **Claims** and/or the number of claimants. The Employment Practices Limit forms part of and, where paid, shall erode the Organisational Aggregate Limit; and
- (c) Extension 8.6 – Retirement Run-Off an aggregate sub-limit of liability in the amount stated in the **Schedule** shall apply.

Once such sub-limits are completely eroded then **We** shall have not further liability under this **Policy**.

- 4.3 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 under this policy. **We** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim**.

5 Deductible

- 5.1 The deductible means the first part of any **Loss** payable by **You** together with any unpaid premium. **We** shall only be liable to the extent that any liability exceeds the relevant deductible.
- 5.2 Payment of any such deductible by **You** is an important condition to payment by **Us**.
- 5.3 The deductible includes **Defence Costs**.

6 Optional Extension – Organisational and Professional Liability

This Extension only applies if it is shown in the **Schedule** and is subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy.

6.1 Cover

(a) Organisational Liability

We will pay on **Your** behalf all **Loss** that **You** are legally liable to pay for an **Claim** against **You** for a **Wrongful Act** or a **Professional Liability Wrongful Act** provided that the **Claim** is first made against **You** during the **Period of Insurance**.

(b) Defence and Investigation Costs

We will pay on **Your** behalf:

- (i) **Defence Costs** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under Clause 6.1(a);
- Defence Costs** in the investigation of any circumstance(s) notified to **Us** under the Condition 10.1 – Claims Notification which is (or are) likely to give rise to an **Claim** which could reasonably be covered under Clause 6.1(a);
- (ii) **Investigation Costs**;
- (iii) **Defence Costs** in the defence or investigation of an **Identity Theft Claim**;
- (iv) **Criminal Prosecution Defence Costs**;
- (v) **Pollution Defence Costs**;
- (vi) **Public Relations Costs**.



6.2 Additional Covers

The following clauses extend cover provided under the Clause 6.1 and are subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy.

(a) Defence Costs for Breach of Contract

We shall pay on **Your** behalf, **Defence Costs** resulting from any **Claim** arising from an alleged breach by **You** of a written contract or agreement, other than any **Employment** contract, up to the aggregate amount stated in the **Schedule** and in excess of:

- (i) any other potentially applicable cover, whether or not it actually responds; and
- (ii) the deductible stated in the **Schedule**.

(b) Data Protection

We shall reimburse **You** for **Defence Costs** resulting from any prosecution first brought against **You** during the **Period of Insurance** and **Notified** to **Us** during the **Period of Insurance** which arises out of **Your** business in respect of any offences or alleged offences under sections 10(9), 11(5), 12(5), and 19(6) of the Data Protection Act 1988 or amending legislation

The maximum aggregate payable by **Us** shall not exceed the amount stated in the **Schedule** and be in excess of:

- (i) any other potentially applicable cover, whether or not it actually responds; and
- (ii) the deductible stated in the **Schedule**.

(c) Fidelity

We shall reimburse **You** for any direct loss of money or other property belonging to **You** first discovered by **You** during the **Period of Insurance** and **Notified** to **Us** during the **Period of Insurance** arising from the dishonest, fraudulent, criminal or malicious act(s) or omission(s) of any **Employee**. This extension applies only in respect of **Losses** resulting solely and directly from such act(s) or omission(s) committed by any **Employee** with the manifest intent to cause **Loss** to **You** or to make an improper financial gain for themselves or for an identified third party, provided that:

- (i) **You** not be reimbursed for any loss of money or other property resulting from dishonest, fraudulent, criminal or malicious act(s) or omission(s) perpetrated after **You** could reasonably have discovered or suspected improper conduct on the part of the relevant **Employee**.
- (ii) no reimbursement shall be provided to any person committing or colluding in any dishonest, fraudulent, criminal or malicious act(s) or omission(s).
- (iii) any monies which but for such dishonest, fraudulent, criminal or malicious act(s) or omission(s) would be due to such person from **You** or any monies of such person held by **You** shall be deducted from any amount payable under this extension.
- (iv) the maximum aggregate payable by **Us** shall not exceed the amount stated in the **Schedule** and be in excess of
 - (1) any other potentially applicable cover, whether or not it actually responds; and
 - (2) the deductible stated in the **Schedule**.



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

- (1) any accounting or arithmetical error or omission or unexplained shortage;
- (2) the default or non-payment of any loan or other credit arrangement;
- (3) any expenses incurred in establishing the amount of any loss of money or other property;
- (4) any loss of interest;
- (5) any loss of profit;
- (6) any loss of money or property not belonging to **You**; or
- (7) the failure to comply with the minimum financial controls set out in the Special Conditions below.

Special Conditions

We will not make any payment under the policy unless **You** operate and can demonstrate to **Our** satisfaction the following minimum controls:

- (a) All cheques or other bank instruments exceeding EUR 10,000 require two manually applied signatures to be added after the payee and amount have been inserted, all electronically activated or online payments exceeding EUR 10,000 require approval and release steps performed by different individuals other than the individuals entering the payment details onto the payments system; and
- (b) At least quarterly and independently of the **Employee** responsible for payroll, all payroll expenditure is reconciled against personnel records to verify accuracy; and
- (c) Any **Employee** receiving cash and cheques on **Your** behalf is required to remit all monies received and/or bank them within five working days of receipt; and
- (d) Statements of account for all amounts due to **You** are issued at least monthly and directly to the relevant customers or other debtors; and
- (e) Bank reconciliations are carried out and cash in hand / petty cash are checked independently of the **Employee** or person responsible at least monthly.

(d) **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** to **Us** during the **Period of Insurance**.

Our total limit of liability in respect of this extension shall not exceed EUR 10,000 in all for the **Period of Insurance** which amount is part of and not in addition to the limit of liability.

(e) **Pension/Employee Benefit Schemes**

We shall pay on **Your** behalf, **Loss** including **Defence Costs** arising from an **Wrongful Act** committed by **You** in **Your** capacity as administrators of any **Pension/Employee Benefit Scheme** provided that the **Claim** is first made against **You** during the **Period of Insurance**.



The maximum aggregate payable by **Us** shall not exceed the amount stated in the **Schedule** and be in excess of:

- (i) any other potentially applicable cover, whether or not it actually responds; and
- (ii) the deductible stated in the **Schedule**.

6.3 Exclusions

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

(a) **Breach of Contract or Agreement**

any actual or alleged breach of contract or agreement, either oral or written, except to the extent provided for in;

- (i) Additional Cover 6.2(a) – Defence Costs for Breach of Contract; or
- (ii) any **Claim** for **Loss** arising from a **Professional Liability Wrongful Act**.

(b) **Breach of Copyright**

any actual or alleged plagiarism or breach of copyright or trademark, patents, database rights, registered design or design rights except to the extent provided for in;

- (i) Additional Cover 6.2(a) – Defence Costs for Breach of Contract; or
- (ii) any **Claim** for **Loss** arising from a **Professional Liability Wrongful Act**.

(c) **Employers Liability**

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

(d) **Employment Practices**

an **Employment Practices Wrongful Act**.

This exclusion shall not apply to an **Employment Practices Wrongful Act** covered under Optional Extension – Employment Practices Liability Extension, if applicable.

(e) **Information Technology**

any of the following:

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

(f) **Insolvency**

Your insolvency or bankruptcy.



(g) **Joint Venture**

any association or joint venture conducted with any third party other than in respect of any **Claim** or circumstance arising from an **Employment Practices Wrongful Act**, provided that such **Claim** or circumstance emanates from a wholly independent third party.

(h) **Manufacture, Supply or Sale of Goods**

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

(i) **Medical Services**

the provision of, or failure to provide, medical services.

(j) **Price Fixing**

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

(k) **Related Companies**

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

(l) **Securities**

any purchase, exchange or sale or offer to purchase or sell, securities of any description by means of a prospectus or private placement on or after the commencement of the **Period of Insurance**.

(m) **Trading Losses**

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

7 Optional Extension – Employment Practices Liability

This Extension only applies if it is shown in the **Schedule** and is subject to all other terms, conditions, exceptions, limits, deductibles and exclusions of this policy.

7.1 Cover

(a) **Employment Practice Liability**

We will pay all **Loss** that **You** are legally liable to pay for an **Claim** against **You** for an **Employment Practices Wrongful Act** provided that the **Claim** is first made against **You** during the **Period of Insurance**.

(b) **Defence and Investigation Costs**

We will pay on **Your** behalf:

- (i) **Defence Costs** in the defence, investigation or settlement of any **Claim** which falls to be dealt with under Clause 7.1(a);

Defence Costs in the investigation of any circumstance(s) notified to **Us** under the Condition 10.1 – Claims Notification which is (or are) likely to give rise to an **Claim** which could reasonably be covered under Clause 7.1(a);

- (ii) **Investigation Costs** connected to an **Employment Practices Wrongful Act**.



7.2 Exclusions

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

(a) **Non Consulted Dismissal**

any **Claim** arising from actual or threatened redundancy, dismissal or the suspension of any **Employee** where **You** did not consult and follow the advice of a properly qualified human resource person or employment solicitor prior to the actual or threatened redundancy, dismissal or suspension.

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

any **Claim** arising from **Your** failure to act in accordance with

- (i) any Trade Union agreement or collective bargaining agreement.
- (ii) any minimum wage legislation.

8 General Extensions

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

8.1 Automatic Acquisition Cover

Insuring Clauses 2.1(a), 2.2 and Optional Extension – Organisational and Professional Liability, if applicable, shall be extended to cover **Loss** arising out of a **Claim**:

- (a) against any **Trustee** of; or
- (b) against **You**, under Optional Extension – Organisational and Professional Liability, if applicable, for;

any **Subsidiary** newly created or acquired, including by merger, during the **Period of Insurance** provided:

- (i) **Your** total gross assets including **Your Subsidiaries** as shown, where they exist, in the audited consolidated group accounts most recently preceding the **Period of Insurance** are not increased by the acquisition or creation of such **Subsidiary** or **Subsidiaries** by more than 50%; and
- (ii) any **Wrongful Act** takes place while the **Subsidiary** is **Your Subsidiary**.

This extension shall not apply to any **Trustee** of a new **Subsidiary** that:

- (1) has its securities listed or traded on any exchange; or
- (2) possesses any tangible or intangible asset located within the USA and /or Canada.

Where the coverage for the **Trustees** of a newly created or acquired **Subsidiary** is not automatically conferred as a consequence of (i) or (ii) above, then **You** may request that the policy be extended to cover the **Trustees** of such **Subsidiary** and **We**, at **Our** sole discretion, may alter the terms and conditions of this policy accordingly including the charging of an additional premium.



8.2 Discovery

In the event that, on the expiry of the **Period of Insurance**, this policy is not renewed or replaced with any other policy broadly equivalent to this policy in scope then:

- (a) the **Trustee**; or
- (b) **You**, under Optional Extension – Organisational and Professional Liability, if applicable;

shall have the right to purchase a **Discovery Period** so that for the purposes of Insuring Clause 2.1(a) or Clause 6.1, as applicable, any **Claim** made in the **Discovery Period** shall be treated as having been first made during the **Period of Insurance**, subject to the following conditions:

- (i) cover shall apply only to **Claims** arising out of **Wrongful Acts** committed (or alleged to have been committed) prior to the expiry of the **Period of Insurance**; and
- (ii) the **Discovery Period** is only effective if the following additional premium is paid within thirty (30) days of the expiry of the **Period of Insurance**:
 - (1) 50% for a **Discovery Period** of twelve (12) months;
 - (2) 100% for a **Discovery Period** of twenty-four (24) months.
- (iii) the right to purchase the **Discovery Period** is not exercisable after or, once purchased, shall lapse upon:
 - (1) the **Trustee** or **You** effecting a policy broadly equivalent to this policy in scope; or
 - (2) the appointment of an insolvency practitioner (or equivalent) as **Your** liquidator, administrator or receiver (or equivalent); and
- (iv) **We** shall have no liability to a **Trustee** to the extent that the **Trustee** is entitled to a reimbursement from **You** under any applicable company law or agreement.

8.3 Emergency Defence Costs

In the event the **Trustee** or **You**, under Optional Extension – Organisational and Professional Liability, if applicable, are unable to contact **Us** or **Our** representatives to obtain consent to authorise **Defence Costs** following a **Claim**, then, in relation to any **Claim** that may be covered by Insuring Clause 2.1(a) or Clause 6.1, as applicable, **We** agree to reimburse the **Trustee** or **You** for emergency **Defence Costs** incurred during the period of up to fourteen days from the date the **Claim** was first made and up to the amount stated in the **Schedule**

8.4 Outside Boards

Cover under insuring clauses 2.1(a) and 2.2 shall extend to any **Wrongful Act** committed in the capacity of **Outside Trustee** but only in excess of the aggregate of:

- (a) the amount of **Loss** the **Outside Trustee** serving on the outside board is reimbursable by the outside entity.
- (b) any other potentially applicable cover, whether or not it actually responds.



8.5 Personal Appointments

Cover under insuring clauses 2.1(a) and 2.2 shall extend to any actual or alleged act, error, omission, misstatement, misleading statement, negligent act, negligent error, negligent omission or negligent breach of duty committed or attempted by a **Trustee** whilst serving in a personal capacity as a governor or trustee of a **School, Charity or Charitable Organisation** but only in excess of the aggregate of:

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

Provided that:

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

8.6 Retirement Run-off

In the event that, on the expiry of the **Period of Insurance**, this policy is not renewed or replaced with any other Trustee Liability or Directors and Officers policy cover broadly equivalent to this policy in scope then this policy shall extend to cover any **Trustee** who had retired or resigned from **You** prior to the date of such expiry in respect of any **Claim** covered under Insuring Clause 2.1(a) and which is first made during the period of six years immediately following such retirement or resignation. However this extension shall only apply:

- (a) in respect of **Wrongful Acts** committed during the original **Period of Insurance**; and
- (b) in respect of **Wrongful Acts** committed during any previous **Period of Insurance** which is linked by continuous renewal to this **Period of Insurance**; and
- (c) if the **Insured** has retired for reasons other than disqualification or as a result of a merger, consolidation or acquisition as detailed in Extension 8.7 – Takeovers and Mergers; and
- (d) up to aggregate sub-limit stated in the **Schedule** in respect of a **Trustee** in the **Period of Insurance** combined with any **Discovery Period**.

8.7 Takeovers and Mergers

If during the **Period of Insurance** **You** merge with or consolidate into another organisation where the other organisation or person assumes the right to appoint or remove the majority of **Your** trustees or board of directors or assumes control of **You**:

- (a) cover shall thereafter apply only to **Wrongful Acts** committed prior to the effective date of such merger, consolidation or acquisition;
- (b) **You** may cancel the remainder of this policy on **Your** behalf and that of all **Trustees** by sending written notice to **Us**, stating the date from which the cancellation is to take effect;
- (c) **You** may request that the policy may be extended for a further six (6) years to provide cover for **Wrongful Acts** occurring prior to the effective date of such merger, consolidation or acquisition. This extension shall be at **Our** sole discretion and may amend the terms of this policy and:



- (i) Extensions 8.2 – Discovery Period and 8.6 – Retirement Run-Off will not apply to any such extension;
- (ii) cover shall lapse in the event that **You** effect any other Trustee Liability or Directors and Officers policy broadly equivalent to this policy in scope;
- (iii) cover shall not be provided to any **Trustee** who has been or is disqualified from holding such position.

9 Exclusions

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

9.1 Asbestos

the manufacture, mining, processing, distribution, testing, remediation, removal, storage, presence of, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos

9.2 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, except:

- (a) emotional distress, mental stress and mental anguish in respect of any **Employment Practices Wrongful Act**;
- (b) in respect of **Criminal Prosecution Defence Costs** in any criminal proceedings or investigation under health and safety/manslaughter or corporate manslaughter legislation for gross breach of duty of care that causes the death of another person or the equivalent in any jurisdiction; or
- (c) arising directly from a **Professional Liability Wrongful Act** under Optional Extension – Organisation and Professional Liability, if applicable.

9.3 Dishonest, Fraudulent or Criminal Acts

any dishonest, fraudulent or criminal act or omission or any wilful breach of any statute, rule or law by the **Trustee**.

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

9.4 Documents or Data

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



9.5 **Information Technology**

any of the following:

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

9.6 **Known Claim, Investigation or Circumstance**

- (a) any **Claims**, investigations or circumstances known to **You** or **Trustee**; or
- (b) about which **You** or **Trustee** ought to have known;

prior to the commencement of the **Period of Insurance**.

9.7 **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.

9.8 **Other Insurance**

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

9.9 **Other Pension/Employee Benefit Schemes**

any retirement, pension, profit-sharing, health, welfare or any other employee benefit fund, trust scheme or plan or related legislation or regulations anywhere in the world other than as provided under Additional Cover 6.2(e) – **Pension/Employee Benefit Schemes**.

9.10 **Pollution**

any **Pollution** and any regulatory, direction or request to test for, assess, monitor, remove, contain, treat, detoxify or neutralise any **Pollution**.

This exclusion shall not apply to **Pollution Defence Costs** in relation to any **Wrongful Act** concerning such matters.



9.11 **Professional Liability**

any **Claim** arising from or connected with the giving of professional advice or service whether or not for remuneration or any act, error or omission relating thereto, except, if applicable, to the extent provided for under Clause 6.1(a) for a **Professional Liability Wrongful Act**.

9.12 **Profit or Advantage**

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

This exclusion shall only apply to a **Trustee** who has admitted such conduct has occurred or against whom there has been a final adjudication by a competent court or tribunal that such conduct has occurred.

9.13 **Property Damage**

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

9.14 **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.

9.15 **Securities**

any purchase, exchange or sale or offer to purchase, exchange or sell, securities of any description by means of a prospectus or private placement on or after the commencement of the **Period of Insurance**.

9.16 **Subsidiary**

any **Claim** resulting from a **Wrongful Act** occurring after any **Subsidiary** ceases to be **Your Subsidiary**.

9.17 **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**.

9.18 **United States of America and/or Canada**

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

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



10 Conditions

10.1 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**;
- (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 (including an **Investigation, Asset and Liberty Proceedings, Extradition**, and criminal investigation or proceedings), copies of all such documents being provided with such notification;
- (c) of any circumstance of which **You** or the **Trustee** shall become aware which may give rise to a **Claim**;
- (d) of any circumstance of which **You** or the **Trustee** shall become aware which may give rise to an entitlement to be reimbursed under this policy.

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

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

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

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

10.2 Duty to Cooperate

It is an important condition to **Our** liability under this policy that **You** and/or the **Trustee** must provide to **Us** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where **You** and/or the **Trustee** 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 the **Trustee** (or any person, firm or company acting for or on behalf of **You** and/or the **Trustee**) 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.



10.3 No Admission of Liability

It is an important condition to **Our** liability under this policy that **You** and/or the **Trustee** 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** and/or the **Trustee** 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.

10.4 Our Entitlement to Defend

We shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance(s) likely to give rise to a **Claim** and any circumstance(s) where cover has been requested under this **Policy** including as to the choice and appointment of legal representation. If **We** take over the conduct of a **Claim** then they shall be entitled to defend or settle the **Claim** at **Our** absolute discretion.

10.5 Non-Imputation

- (a) This policy shall operate severally in relation to each **Trustee**.
- (b) In determining whether **We** are entitled to apply the provisions of Clause 1.11 – Information You Have Given Us to an **Trustee's** interest in this policy or reject a **Insured's** claim for reimbursement under this policy, **We** shall only take into account the information provided by or the acts, omissions or conduct of, that particular **Trustee**.
- (c) In determining whether **We** are entitled to apply the provisions of Clause 1.11 – Information You Have Given Us to **Your** interest in this policy where cover is available to **You**, **We** shall only take into account the information provided by or the acts, omissions or conduct on the part of, any two out of **Your** chairman of the board, managing director, finance director, chief legal officer or their equivalents shall be treated to be imputed or attributable to **You**.

10.6 Advanced Payment of Costs

We shall pay **Defence Costs** as they are incurred. However in the event and to the extent that it is finally determined that **You** or **Trustee** is not entitled to such payments under this **Policy** the sums advanced must be repaid to **Us** upon demand.

10.7 Allocation of Loss

In the event of any **Loss** being partially covered and/or any **Claim** against a **Trustee** being also made against **You** and/or one or more persons who are not a **Trustee**, **We**, the **Trustee** and/or **You** shall use their best endeavours to agree fairly such an allocation of **Loss** to the policy as may be appropriate and proportional to the aggregate of insured and uninsured loss, damages and legal and other costs.

10.8 Subrogation

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



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

10.9 **Consent to Settle**

We shall not settle any **Claim** without the written consent of the person or entity insured. If the person or entity insured refuses to consent to a settlement demand acceptable to the claimant and recommended by **Us** and elects instead to contest the **Claim**, then **Our** total liability for such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus any **Defence Costs** incurred as of the date such **Claim** could have been settled and to which this policy would otherwise apply. In the event of a dispute between **Us** and the person or entity insured in relation to whether a **Claim** should be settled **We** may obtain an opinion from Senior Counsel or a person who holds an equivalent position in any other jurisdiction and such opinion shall be binding on **Us** and the person or entity insured.

10.10 **Order of Payments**

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

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

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