



Policy

Governance Liability

Form SL-GL 0220 - XLCICL

February 2022



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1 Our agreement

1.1 Parties to this agreement

This **policy** is between **company** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.2 Insurer's information

XL Catlin Insurance Company UK Limited.

The **insurer** is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference No. 423308). Our registered office is 20 Gracechurch Street, London, EC3V 0BG United Kingdom. Registered in England No. 5328622.

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.

XL Catlin Services SE

XL Catlin Services SE acts as an agent of XL Catlin Insurance Company UK Limited 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 20 Gracechurch Street, London, EC3V 0BG.

1.3 Fair Processing Notice

This Privacy Notice describes how XL Catlin Insurance Company UK Limited (together, "we", "us" or the "insurer") collect and use the personal information of insureds, claimants and other parties ("you") when we are providing our insurance and reinsurance services.

The information provided to the insurer, together with medical and any other information obtained from the company 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>.



1.4 Premium payment

- (a) The **director** and/or the **company** undertakes that **premium** will be paid in full to the **insurer** within sixty (60) days of inception of this **policy** (or, in respect of instalment **premiums**, when due).
- (b) If the **premium** has not been so paid to the **insurer** by the thirtieth (30th) day from the inception of this **policy** (and, in respect of instalment **premiums**, by the date they are due) the **insurer** shall have the right to cancel this **policy** by notifying the **director** and/or the **company** via the broker in writing. In the event of cancellation, **premium** is due to the **insurer** on a pro rata basis for the period that the **insurer** is on risk but the full **policy premium** shall be payable to the **insurer** in the event of a notification prior to the date of termination which gives rise to a **notifiable claim** under this **policy**, and the **premium** shall be added to and form part of the deductible amount in the event of its non-payment.
- (c) It is agreed that the **insurer** shall give not less than fourteen (14) days prior notice of cancellation to the **director** and/or the **company** via the broker. If **premium** due is paid in full to the **insurer** before the notice period expires, notice of cancellation shall automatically be revoked, if not, this **policy** shall automatically terminate at the end of the notice period.

1.5 Claim procedure

For all claims please contact the **insurer** using the information stated in the 'Notification' clause to this **policy**. The **insurer** will be able to deal with the **claim** more effectively and speedily if the **director** and/or the **company** provides the '**Policy** number' shown on the 'Schedule' on first contact.

1.6 Change in circumstances

The **director** and/or the **company** must tell the broker within fourteen (14) days of the **director** and/or the **company** becoming aware of any changes in the information which the **director** and/or the **company** has provided to the **insurer** which happen before or during any **period of insurance**. If the **director** and/or the **company** become aware that the information provided is inaccurate, the **director** and/or the **company** should inform their broker as soon as practicably possible.

When the **insurer** is notified of a change the **insurer** will tell the **director** and/or the **company** if the change affects this **policy**. For example the **insurer** may amend the terms of this **policy** or require **director** and/or the **company** to pay more for this insurance. If **director** and/or the **company** do not inform the **insurer** about a change it may affect any claim the **director** and/or the **company** make or could result in this insurance being invalid.

1.7 Fraud

If the **director** and/or the **company**, or anyone acting on behalf of the **director** and/or the **company**, makes a claim which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent document, the **insurer** will not pay any part of the **director** and/or the **company's** claim or any other subsequent claim. In addition, the **insurer** will have the right to:

- (a) treat this **policy** as if it never existed, or at the **insurer's** option terminate this **policy**, without returning any premium that the **director** and/or the **company** has paid;
- (b) refuse any other benefit under this **policy**.

1.8 Governing law and jurisdiction

This **policy** shall be governed by and construed in accordance with the law of England and Wales, the courts of which shall have sole jurisdiction to deal with any matters in dispute not determinable by arbitration.

In the event that any dispute should arise between the **insurer** and the **director** and/or the **company** as to the existence, validity, terms and effect of this **policy** then such dispute shall be referred to arbitration before a sole arbitrator in London, England, to be appointed, in the event that the **insurer** and **director** and/or the **company** cannot agree upon a suitable person, by the president for the time being of the chartered institute of arbitrators of England and Wales.



1.9 **Language of this policy**

Unless otherwise agreed the language of this **policy** shall be English.

1.10 **Rights of third parties**

A person who is not a party to this **policy** has no right under the 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 which exists or is available apart from that act.

1.11 **Sanctions**

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

1.12 **Questions and Complaints**

If the **director** and/or the **company** have any questions or concerns about this insurance or the handling of a **claim**, please contact your broker named in the **schedule** through whom this insurance was arranged.

If the **director** and/or the **company** would like to make a complaint, the **director** and/or the **company** can do so at any time by referring the matter to the:

Complaints Manager
XL Catlin Services SE
20 Gracechurch Street
London
EC3V 0BG
United Kingdom

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

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

If the **director** and/or the **company** remain dissatisfied after the Complaints Manager has considered the complaint, or the **director** and/or the **company** have not received a final decision within eight weeks, if eligible, the **director** and/or the **company** can refer the complaint to the Financial Ombudsman Service at:

Exchange Tower
London
E14 9SR
United Kingdom

Email: complaint.info@financial-ombudsman.org.uk

From within the United Kingdom

Telephone Number:	0800 0234 567	(free for people phoning from a "fixed line", for example, a landline at home)
Telephone Number:	0300 1239 123	(free for mobile-phone users who pay a monthly charge for calls to numbers starting 01 or 02)

From outside the United Kingdom

Telephone Number:	+44 (0) 20 7964 1000
Fax:	+44 (0) 20 7964 1001

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



1.13

Financial Services Compensation Scheme

XL Catlin Insurance Company UK Limited is covered by the Financial Services Compensation Scheme. The **director** and/or the **company** may be entitled to compensation from the Scheme if the **insurer** is unable to meet its obligations under this contract of insurance. If the **director** and/or the **company** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract of insurance. 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



2 Definitions

The following words will have the same meaning attached each time they appear in this **policy** in bold type face, whether with a capital first letter or not. Where the context so admits or requires, words importing the singular will include the plural.

2.1 **Asset and liberty proceeding**

Asset and liberty proceeding means any proceeding brought against the **director** by any body (including the Financial Conduct Authority) other than the **company**, so authorised for the purpose of examining the affairs of the **company** or the conduct of the **director** in their capacity as such, seeking:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of a **director**;
- (b) a charge over real property or personal assets of such **director**;
- (c) a temporary or permanent prohibition on such **director** from holding the office of or performing the function of a **director**;
- (d) a restriction of such **director's** liberty to a specified domestic residence or an official detention;
- (e) deportation of a **director** following revocation of otherwise proper, current and valid immigration status for any reason other than such **director's** conviction of a crime.

2.2 **Asset and liberty proceedings defence costs and expenses**

Asset and liberty proceedings defence costs and expenses means **defence costs and expenses** incurred by the **director** in dealing with an **asset and liberty proceeding**, provided that such proceeding is commenced during the **period of insurance**.

2.3 **Claim**

Claim means any demand for compensation or damages, or the allegation of a right that can be enforced through a civil proceeding, alleging a **wrongful act**. All **claims** related or connected in any way by reference to any common contributory factor or characteristic shall be treated as a single **claim** first made on the date the first such **claim** was notified.

2.4 **Company**

Company means the company/companies stated in the **schedule** and its/their **subsidiaries**.

2.5 **Criminal prosecution**

Criminal prosecution means any prosecution commenced by the police or any other criminal prosecuting body, including under Health and Safety legislation, against the **Director** in their capacity as such.

2.6 **Criminal prosecution defence costs and expenses**

Criminal prosecution defence costs and expenses means **defence costs and expenses** incurred by the **director** in defending a **criminal prosecution** that is commenced during the **period of insurance**.

2.7 **Defence costs and expenses**

Defence costs and expenses means reasonable fees, costs and expenses incurred with the prior written and continuing consent of the **insurer** (such consent not to be unreasonably withheld), by or on behalf of the **company** or a **director** after a **notifiable claim** is made, directly in connection with its investigation, defence, settlement or appeal. It does not include the **company's** or a **director's** own costs and expenses (including salaries) or any time spent by them in dealing with a **notifiable claim**.

Defence costs and expenses shall include **premium** paid for insurance instruments or for bonds which may be required.



2.8 **Director**

Director means any natural person, except an external auditor or an insolvency office holder, who at the date of inception has been or is, or who during the **period of insurance** becomes:

- (a) a director or officer of the **company**, including non-executive directors and persons who hold equivalent positions in any other jurisdiction;
- (b) an outside director;
- (c) an **employee** acting in any managerial or supervisory capacity or who is named as co-defendant with any **director**.

2.9 **Discovery period**

Discovery period means the period of twelve (12) months immediately following the expiry of the **period of insurance** during which written notice may be given to the **insurer** of a **notifiable claim** first made during such period or the **period of insurance**.

2.10 **Employee and Employment**

Employee and Employment means any person, other than a **director** of the **company**, who is under a contract of service or apprenticeship with, supplied to, hired, or borrowed by the **company**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **company**.

2.11 **Employment practices wrongful act**

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) sexual harassment, including unwelcome sexual or non-sexual advances, requests for sexual favours and any unwelcome verbal or physical contact of a sexual nature which:
 - (i) is explicitly or implicitly made a term or condition of **employment**, or
 - (ii) creates a hostile or offensive working environment for an **employee**; or
 - (iii) when rejected or opposed by a person becomes a basis for decisions regarding that person's **employment**.
- (c) defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for **employment**, professional reputation, disciplinary history or termination of **employment**;
- (d) unfair or constructive dismissal of an **employee** (or the equivalent in any other jurisdiction) or refusal to hire or promote an **employee**;
- (e) adverse change in the terms and conditions of a person's **employment** in retaliation for that person's exercise of their rights under law, or support of the rights of another.

2.12 **Extradition notice**

Extradition notice means:

- (a) any request for the extradition of any **director**, any warrant for the arrest of any **director** or other proceedings under the provisions of the United Kingdom Extradition 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 the Home Secretary or another appropriately authorised representative of the Government of the United Kingdom to issue an extradition certificate under the United Kingdom Extradition Act 2003;
- (c) the equivalent of the above in any other jurisdiction;

arising from a **wrongful act**.

2.13 **Extradition proceedings defence costs and expenses**

Extradition proceedings defence costs and expenses means **defence costs and expenses** incurred by the **director** in dealing with an **extradition notice**, provided the **extradition notice** is first served on the **director** during the **period of insurance**.

2.14 **Identity theft claim**

Identity theft claim means any claim for damages made by a third party to enforce an agreement entered into with another person fraudulently representing themselves as a **director** or the **company**.

2.15 **Insurer / We / Us**

Insurer / We / Us means XL Catlin Insurance Company UK Limited.

2.16 **Investigation**

Investigation means any formal request for information from a **director** or for the **director's** attendance at an interview, which is made by any body (including the Financial Conduct Authority) other than the **company** (unless in respect of any internal investigation instigated as a result of a **shareholder derivative action**), so authorised for the purpose of examining the affairs of the **company** or the conduct of the **director** in their capacity as such, including but not limited to proceedings under the corporate manslaughter and corporate homicide act 2007 or the financial services and markets act 2000.

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

2.17 **Investigation defence costs and expenses**

Investigation defence costs and expenses means **defence costs and expenses** incurred by the **director** in an **investigation**, provided the **investigation** is initiated during the **period of insurance**.

2.18 **Loss**

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

Loss does not include:

- (a) employee remuneration, benefits, stock or share options or severance payments; or
- (b)
 - (i) taxes; or
 - (ii) fines; or
 - (iii) civil, regulatory or criminal penalties; or
 - (iv) punitive, aggravated or exemplary damages;

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

2.19 **Non-Indemnifiable loss**

Non-indemnifiable loss means any **loss** of a **director** that the **company** cannot provide an advancement or indemnity for due to legislative prohibition or insolvency as determined in accordance with section 123 of the Insolvency Act or the equivalent in any other jurisdiction.

2.20 **Notifiable claim**

Notifiable claim means a claim or an investigation or a criminal prosecution or an extradition notice or an asset and liberty proceeding or an identity theft claim.

2.21 **Outside director**

Outside director means any **director** formally appointed on the specific request of the **company** to the board or equivalent position (including in the case of not-for-profit organisations, governors and committee members) in an **outside entity**.

2.22 **Outside entity**

Outside entity means any entity in which the **company** holds a shareholding, including any not-for-profit entity, provided that such entity is not:

- (a) a publicly listed company or possesses any assets located within the USA but this proviso shall not apply in the event the **insurer** agrees in writing otherwise; or
- (b) a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity;

unless such entity has been specified in the **schedule**;

2.23 **Period of insurance**

Period of insurance means the period stated in the **schedule**.

2.24 **Policy**

Policy means this document, including the **schedules** or certificate of insurance issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract.

2.25 **Pollutants**

Pollutants means 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, but not limited to, material to be recycled, reconditioned or reclaimed) or contamination of any kind; or 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.

2.26 **Pollution defence costs and expenses**

Pollution defence costs and expenses means **defence costs and expenses** incurred in relation to any **notifiable claim** first made during the **period of insurance**, against the **director** in their capacity as such, involving any **pollutants**. for the avoidance of doubt, this does not include the costs involved in testing for, monitoring, cleaning up, removing, containing, treating or detoxifying any **pollutants**.

2.27 **Premium**

Premium means the amount stated in the **schedule**.

2.28 **Proposal**

Proposal means the written information referred to in the **schedule** and containing particulars and statements together with any other information and documents supplied to the **insurer** by or on behalf of any **director** or the **company**.

2.29 **Public relations expenses**

Public relations expenses means the reasonable fees, costs and expenses of the public relations consultants incurred by a **director** with the prior written consent of the **insurer** to be given at its absolute discretion where it is satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **director's** reputation from a **notifiable claim** first made against the **director**, in their capacity as such, during the **period of insurance**.

2.30 **Schedule**

Schedule means the document entitled **schedule** that attaches to and forms part of this **policy**.

2.31 **Securities**

Securities means any security representing the debt of or equity interests in the **company**.



2.32 **Shareholders derivative costs**

Shareholders derivative costs means the reasonable fees, costs and expenses incurred by any shareholder of the **company** in pursuing a **claim** first made during the **period of insurance** against any **director** for a **wrongful act** by way of a shareholder derivative action on behalf of the **company** but only to the extent that the **company** is legally liable to pay such fees, costs and expenses pursuant to an order of the court.

2.33 **Subsidiary**

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

- (a) owned or owns directly or through one or more of its **subsidiaries** more than fifty (50%) percent of the voting rights or more than fifty (50%) percent 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 the **company** is also a shareholder in it;

But only in respect of **wrongful acts** committed in relation to the **subsidiary** while a **subsidiary** of the **company**.

2.34 **Total gross assets**

Total gross assets means the total gross assets of the **company** including its **subsidiaries** as shown, where they exist, in the audited consolidated group accounts most recently preceding the **period of insurance**.

2.35 **Wrongful act**

Wrongful act means any actual or alleged act, error, omission, misstatement, misleading statement, libel, slander, negligent act, negligent error, negligent omission or negligent breach of duty by a **director** in their capacity as such. **Wrongful act** shall include any proposed act with respect to shareholder derivative actions under the companies act 2006.



3 Insuring clauses

- 3.1 The **insurer** will pay on behalf of the **director**:
- (a) **loss and defence costs and expenses** arising from a **claim** against the **director** in their capacity as such provided that the **claim** is first made during the **period of insurance**; or
 - (b) **investigation defence costs and expenses**; or
 - (c) **criminal prosecution defence costs and expenses**; or
 - (d) **pollution defence costs and expenses**; or
 - (e) **extradition proceedings defence costs and expenses**; or
 - (f) **asset and liberty proceedings defence costs and expenses** for any amount not exceeding the sub-limit of indemnity stated in the **schedule** or
 - (g) **public relations expenses**:
- except to the extent insuring clause 3.2 applies.
- 3.2 The **insurer** will pay on behalf of the **company** any sums that the **company** has paid to or is held liable to pay the **director** by way of an advancement or indemnity in relation to the **director's** liability that would otherwise be covered by insuring clause 3.1.
- 3.3 The **insurer** will pay on behalf of the **company** the shareholders derivative costs.
- 3.4 The **insurer** will pay **defence costs and expenses** incurred by the **director** or the **company** in connection with an **identity theft claim** first made during the **period of insurance**.
- 3.5 The **insurer** will pay on behalf of the **company** any **loss and defence costs and expenses** arising from a **claim** against the **company** for an **employment practices wrongful act** provided that the **claim** is first made against the **company** during the **period of insurance** or discovery period if applicable. Cover in respect of this insuring clause 3.5 shall be subject to a sub-limit of GBP 1,000,000.



4 Limit of Indemnity

- 4.1 Subject to the non-executive director's reinstatement of cover (clause 6.6), the limit of indemnity means the maximum aggregate amount payable by the **insurer** under this **policy** including any endorsements or extensions irrespective of the number of **notifiable claims**.
- 4.2 The limit of indemnity shall be as stated in the **schedule**.
- 4.3 Any payment in respect of any insuring clause and/or any endorsement or otherwise shall erode the limit of indemnity. Once the limit of indemnity is completely eroded then, subject to the non-executive director's reinstatement of cover (clause 6.6), the **insurer** shall have no further liability under this **policy**.
- 4.4 The sub-limits of indemnity shown in the **schedule** and this **policy** relate to specific insuring clauses. These sub-limits are each aggregate limits and form part of the limit of indemnity and so where paid, in whole or in part, shall erode the limit of indemnity. Once such sub-limit is completely eroded then, subject to the non-executive director's reinstatement of cover (clause 6.6), the **insurer** shall have no further liability under the relevant insuring clause.
- 4.5 In the event that the non-executive director's reinstatement of cover (clause 6.6) is triggered, then each and every further payment to the **director** shall erode the non-executive director's reinstatement of cover limit of indemnity and once completely eroded the **insurer** shall have no further liability under this **policy**.

5 Deductible

- 5.1 The deductible is not applicable to **non-indemnifiable loss**.
- 5.2 Where a deductible applies under insuring clause 3.2, the **insurer** shall be liable for **loss** which exceeds the deductible. The deductible does not form part of the **insurer's** liability for **loss** and shall remain uninsured. The **insurer** shall only be liable to the extent that any liability exceeds the relevant deductible.
- 5.3 The deductible shall be as stated in part the **schedule** except that:
- (a) in respect of insuring clause 3.2 insofar as the **insurer** is called upon to pay **loss** arising in connection with any legal proceedings:
 - (i) In the USA or for the enforcement of any order or judgement of any USA court a deductible as stated in part (a) of the **schedule** shall apply,
 - (b) In respect of clause 6.9 a deductible as stated in part (b) of the **schedule** shall apply.
- 5.4 Payment of such deductible by the **company** is a condition precedent to payment by the **insurer** unless the **company** is unable to pay by reason of insolvent liquidation or is legally prohibited from paying. In the event that payment of any such deductible is not made within thirty (30) days the **insurer** shall advance to the **director** all **loss** within the deductible. In such circumstances the **company** agrees to repay the deductible to the full extent once the **insurer** has notified them of the amount so advanced.
- 5.5 Only one deductible shall apply to **notifiable claims** that are related or connected in any way by reference to any common contributory factor or characteristic.
- 5.6 The deductible includes defence costs and expenses and investigation defence costs and expenses except for non-indemnifiable loss.

6 Extensions

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

6.1 Automatic acquisition cover

Where, during the **period of insurance**, the **company** creates or acquires an entity then such entity shall be treated as being a **subsidiary** for the purpose of this **policy** provided that:

- (a) the **total gross assets** of the **company** are not increased by the acquisition or creation of such **subsidiary** by more than twenty five (25%) percent; and
- (b) such newly created or acquired **subsidiary** is not domiciled in the USA or has its securities listed or traded on any exchange; and
- (c) cover shall only apply to **notifiable claims** arising directly or indirectly out of any **wrongful act** committed (or alleged to have been committed) subsequent to the effective date of such creation or acquisition.

Where the coverage for a newly created or acquired **subsidiary** is not automatically conferred as a consequence of (a) or (b) above, then the **company** may request that the **policy** be extended to cover such **subsidiary** and the **insurer**, at its sole discretion, may alter the terms and conditions of this **policy** accordingly including the charging of an additional premium.

6.2 Corporate manslaughter

The **insurer** shall pay the **loss** of any **director**, under insuring clause 3.1, with respect to any proceeding brought against them for any gross breach of duty of care that causes the death of another person including under the Corporate Manslaughter and Homicide Act 2007.

6.3 Discovery period

In the event that, on the expiry of the **period of insurance**, this **policy** is not renewed or replaced with any other management liability **policy** broadly equivalent to this **policy** in scope then the **director** shall have the right to purchase a **discovery period** so that for the purposes of insuring clause 3.1, any **notifiable claim** made in the **discovery period** shall be deemed to have been first made during the **period of insurance**, subject to the following conditions:

- (a) cover shall apply only to **notifiable claims** arising directly or indirectly out of **wrongful acts** committed (or alleged to have been committed) prior to the expiry of the **period of insurance**, and
- (b) the **discovery period** is only effective if the one hundred (100%) percent additional **premium** is paid within thirty (30) days of the expiry of the **period of insurance**; and
- (c) the right to purchase the **discovery period** is not exercisable after or, once purchased, shall lapse upon:
 - (i) the **director** or the **company** effecting a management liability **policy** broadly equivalent to this **policy** in scope; or
 - (ii) the appointment of an insolvency practitioner (or equivalent) as a liquidator, administrator or receiver (or equivalent) of the **company**; and
- (d) the **insurer** shall have no liability to a **director** to the extent that the **director** is entitled to an indemnity from the **company** under any applicable company law or agreement.

6.4 Retirement run-off

In the event that, on the expiry of the **period of insurance**, this **policy** is not renewed or replaced with any other management liability **policy** broadly equivalent to this **policy** in scope then this **policy** shall extend to cover any **director** who had retired or resigned from the **company** prior to the date of such expiry in respect of **notifiable claims** made against that **director** for a further six years immediately following such retirement or resignation. However this extension shall apply only:

- (a) in respect of **wrongful acts** committed either during the **period of insurance** or any previous **policy** period underwritten by the **insurer** which is linked by continuous renewal to this **period of insurance**; and
- (b) if the **director** has retired or resigned for reasons other than disqualification or as a result of a merger, consolidation or acquisition as detailed in clause 8.9(a); and
- (c) up to an aggregate sub-limit of ten (10%) percent of the limit of indemnity stated in the **schedule**.

6.5 **Outside boards**

The cover shall extend to any **wrongful act** committed in the capacity of **outside director**, but only in excess of the aggregate of:

- (a) the amounts indemnifiable by the entity on whose board the **outside director** is serving; and
- (b) any other collectible insurance cover available to the **director**; and
- (c) a deductible which shall be the deductible figure specified in clause 5.

6.6 **Non-executive director's reinstatement of cover**

In the event that payments are made exhausting the limit of indemnity of this **policy**, and of all other applicable management liability policies operating in excess of it, and any other source available to provide indemnification for **loss** to the non-executive director then the **insurer** agrees to provide an indemnity to the non-executive director for **non-indemnifiable loss**.

For the avoidance of doubt the non-executive director's reinstatement of cover limit of indemnity shall apply only once for each non-executive director.

The **insurer** will only be liable under this extension to pay the sums described in insuring clause 3.1 incurred by each non-executive director up to a limit of ten (10%) percent, subject to an annual aggregate of twenty five (25%), of the limit of indemnity stated in the **schedule**.

6.7 **Emergency costs**

If the **insurer's** prior written consent cannot reasonably be obtained before:

- (a) **investigation defence costs and expenses;**
- (b) **criminal prosecution defence costs and expenses;**
- (c) **pollution defence costs and expenses;**
- (d) **extradition proceedings defence costs and expenses;**
- (e) **asset and liberty proceedings defence costs and expenses**

are incurred, the **insurer** will give retrospective approval for such costs and expenses, for an amount not exceeding ten (10%) percent of the limit of indemnity stated in the **schedule**, provided that:

- (i) The **insurer's** approval is obtained within fourteen (14) days of such costs being incurred, and
- (ii) The costs would otherwise be covered under this **policy**.

6.8 **Spouses/Estates**

The **insurer's** will pay on behalf of:

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



6.9 Entity cover

The **insurer** will pay on behalf of the **company** its **loss** and its **defence costs and expenses** arising from a **claim** first made against the **company** provided that the **claim** is first made during the **period of insurance**.

The **insurer** shall pay the **defence costs and expenses** incurred by the **company** resulting from any **claim** arising from any alleged breach by the **company** of a written contract or agreement, other than (i) an **employment** contract or (ii) a **claim** arising from the breach of any payment provisions in that contract or agreement. The **insurer's** liability for such **defence costs and expenses** shall be GBP 50,000 each and every **claim**.

The **insurer** will only be liable for **loss** and **defence costs and expenses** under this extension for an aggregate amount not exceeding twenty five (25%) percent of the limit of indemnity stated in the **schedule**. Each **claim** shall be in excess of:

- (a) Any other potentially applicable cover, whether or not is actually responds; and
- (b) The deductible stated in the **schedule**.

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

- (i) any actual or alleged breach of contract or agreement, either oral or written, except to the extent as provided by this extension;
- (ii) any breach of regulatory, statutory or common law aimed at preventing monopolies, price discrimination, fixing of prices or other unfair trade practices;
- (iii) **an employment practices wrongful act;**
- (iv) any proceeding brought against the **company** for any gross breach of duty of care that causes the death of another person including under the Corporate Manslaughter and Homicide Act 2007;
- (v) any liability concerning the manufacture, sale, supply, installation or maintenance of any products or goods.

7 Exclusions

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

7.1 Known claim or circumstance

any **notifiable claim** or circumstance(s) which may give rise to a liability under this **policy** and which was (or were) known to the **director** or the **company** prior to the **period of insurance**.

this exclusion shall only apply to the **director** or **company** that had the requisite knowledge. this exclusion will apply to that **director** even where the **insurer** has waived its right to avoid the **policy** pursuant to clause 8.7.

7.2 Prior and pending litigation

any circumstance, transaction or **wrongful act** underlying or alleged in any prior and pending litigation commenced prior to the date set out in the **schedule**:

- (a) in respect of any **litigation** involving **pollutants**, or
- (b) for all other **litigation**.

For the purposes of this exclusion "litigation" means any civil, administrative, regulatory or criminal proceedings or any investigation, examination, inquiry or disciplinary proceedings.

7.3 Death or bodily injury

any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, howsoever caused except:

- (a) emotional distress, mental anguish and mental stress in respect of any **employment practices wrongful act**; or
- (b) emotional distress arising from any libel or slander; or
- (c) in respect of investigation defence costs and expenses or criminal defence costs and expenses.

7.4 Property damage

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

7.5 Dishonest or fraudulent acts

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

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

7.6 Profit or advantage

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

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

7.7 Pollutants

any **pollutants**. However this exclusion shall not apply to:

- (a) pollution defence costs and expenses which fall within non-indemnifiable loss; or
- (b) any **claim** instigated by way of **shareholder derivative action** including under the Companies Act 2006 or the equivalent in any other jurisdiction without the willing assistance, procurement, instigation or involvement of any director.

7.8 **USA claims by the company**

any **notifiable claim** made in the United States of America by or on behalf of the **company** or **outside entity** or by or on behalf of any **director** or **employee**, provided that this exclusion shall not apply to:

- (a) any **claim** brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of any **company** or **outside entity**; or
- (b) any **claim** against an **employee** in respect of an **employment practices wrongful act**; or
- (c) any **notifiable claim** pursued as a shareholder derivative action brought or maintained on behalf of a **company** or **outside entity** without the voluntary rather than legally required intervention, assistance or active participation of any **director** or the **company** or any **outside entity**; or
- (d) any **notifiable claim** pursued by a **director** or **employee** for contribution or indemnity, if the **notifiable claim** directly results from another **notifiable claim** otherwise covered by this **policy**; or
- (e) any **claim** pursued by any past **director** or **employee** of the **company** or **outside entity**; or
- (f) any **claim** arising as a direct result of whistle-blowing; or
- (g) **defence costs and expenses** of any **director**.

7.9 **Other insurance**

any matter in respect of which the **director** or the **company** is, or but for the existence of this **policy** would be, entitled to cover under any other valid and collectible contract of insurance, except where such other insurance is written as specific excess insurance to provide an indemnity 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 indemnity or any applicable sub-limit as exceeds the limit of the other **policy**.

7.10 **Employee benefit**

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

7.11 **Major shareholder**

any liability based on arising from or attributable to any **claim** brought by or on behalf of, whether directly or derivatively, any individual or entity which owns or controls thirty (30%) percent or more of the issued and outstanding share capital of the **company** provided that this exclusion shall only apply to any **claim** where such individual or entity or their representative has, directly or indirectly, participated in or ratified the alleged **wrongful act** being the subject of the **claim**.

7.12 **Professional indemnity**

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

it is further understood and agreed that notwithstanding the above this exclusion shall not apply to any **claim** arising out of the actual or alleged failure to supervise those who gave or failed to give professional advice or service.

7.13 **Infringement of copyright and patent**

any alleged passing off, infringement of trade mark, registered design, patent or copyright or any comparable intellectual property right in the jurisdiction in which the **claim** is brought.

8 Conditions

8.1 Non-imputation

- (a) This **policy** shall operate severally in relation to each **director**.
- (b) In determining whether the **insurer** is entitled to avoid a **director's** interest in this **policy** or reject a **director's** claim for an indemnity under this **policy**, the **insurer** shall only take into account the **proposal** and the statements made by, or the knowledge possessed by, or the acts, omissions or conduct of that particular **director**.
- (c) In determining whether the **insurer** is entitled to avoid or rescind the **company's** interest in this **policy** where cover is available to it, then the **proposal** and the statements made by, or the knowledge possessed by, or the acts, omissions or conduct on the part of, any two out of the **company's** chairman of the board, managing director, finance director, chief legal officer or their equivalents shall be deemed to be imputed or attributable to the **company**.

8.2 Notification

- (a) As a condition precedent to the right to be indemnified under this **policy** the **director** or the **company** must notify the **insurer** in writing to the notification address set out below of any **notifiable claim** within thirty (30) days of it first being made.
- (b) The **director** or the **company**, as applicable, must notify the **insurer** in writing to the notification address set out below of any circumstance(s) which may give rise to a **notifiable claim** or an entitlement to be indemnified under this **policy**, provided they first become aware of these circumstances during the **period of insurance**. In the event that the **insurer** is so notified during the **period of insurance** of any such circumstance(s) then any subsequent **notifiable claim** which arises directly from the circumstance(s) so notified shall be deemed to have been made during the **period of insurance**, but only if the notice adequately specifies the reasons why a **notifiable claim** is likely to arise.

Notification Address: Claims Department, XL Catlin Insurance Company UK Limited, 20 Gracechurch Street, London, EC3V 0BG United Kingdom.

8.3 Duty to cooperate

As a condition precedent to the right to be indemnified under this **policy** the **director** and/or the **company** shall:

- (a) provide such prompt co-operation, information and assistance as the **insurer** and its representatives, legal advisers or agents may reasonably require; and
- (b) ensure that all documents relevant to any **notifiable claim** or any circumstance(s) likely to give rise to a **notifiable claim** shall not be intentionally destroyed or otherwise intentionally disposed of.

8.4 No admission of liability

As a condition precedent to the right to be indemnified under this **policy** the **director** and/or the **company** shall not, without the prior written approval of the **insurer**, admit liability for, compromise, settle, or make any offer or payment in respect of any **notifiable claim** or any circumstance(s) likely to give rise to a **notifiable claim** or any circumstance(s) where the **director** and/or the **company** has requested cover under this **policy**.

8.5 Insurer entitled to defend

The **insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **notifiable claim** and any circumstance(s) likely to give rise to a **notifiable claim** and any circumstance(s) where the **director** and/or the **company** has requested cover under this **policy** including as to the choice and appointment of legal representation. The **insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **insurer** and the **director** and/or the **company**) provided always that the **director** and/or the **company** shall not be obliged to defend any legal proceedings unless a queen's counsel (to be



mutually decided upon by the **insurer** and the **director** and/or the **company**) shall advise that such proceedings can be contested with a reasonable prospect of success.

8.6 **Subrogation**

The **insurer** shall be subrogated to all the rights of recovery of the **director** against any third party before or after any payment is made under this **policy** provided always that the **insurer** shall not exercise any such rights against any **employee** or former **employee** of the **company** unless the **loss** in respect of which payment is made under this **policy** was caused or contributed to by an intentional fraudulent or dishonest act or omission by the **employee** or former **employee**. The **director** and the **company** shall, without charge, provide such assistance as the **insurer** may reasonably require in any subrogation.

8.7 **Avoidance by insurer**

If the **insurer** is entitled, for any reason, to avoid this **policy** ab initio, the **insurer** may in its absolute discretion elect instead to give notice to the **director** or any of them that it regards this **policy** as being in full force and effect, except that no cover will be given under this **policy** that arises from or is related to the grounds that entitled the **insurer** to avoid this **policy**.

8.8 **Changes in risk**

- (a) If during the **period of insurance** the **company** merges with or consolidated into another entity, or any person or entity acquires fifty (50%) percent or more of its issued share capital, or another entity has or acquires the rights to vote, designate or select a majority of the board of **directors** of the **company** or voting rights:
 - (i) the **company** shall within thirty (30) days give written notice to the **insurer** of such merger, consolidation or acquisition; and
 - (ii) cover shall apply to any **notifiable claim** arising directly or indirectly out of any **wrongful act** committed, or alleged to have been committed, prior to the effective date of such merger, consolidation or acquisition, unless otherwise agreed with the **insurer**, this **policy** shall continue in full force and effect and may not be cancelled after the effective date of the merger, consolidation or acquisition. the entire **premium** for this **policy** shall be deemed fully earned as of such date.
- (b) the **insurer** shall not have any liability under this **policy**, including any endorsements, directly or indirectly arising out of, or in any way connected with any purchase, exchange or sale, or offer to purchase or sell **securities** by means of a prospectus or private placement on or after the commencement of the **period of insurance**. however the **insurer** may at its discretion offer such cover in this regard on terms including as to **premium** as it may think appropriate, subject to the supply and review of all material information and documentation connected with the prospectus or private placement.

8.9 **Advanced payment of costs**

The **insurer** shall pay **defence costs and expenses**, or any other costs and/or expenses payable under this **policy**. however in the event and to the extent that it is finally determined that the **director** or the **company** is not entitled to such payments under this **policy** the sums advanced shall be repaid by the **director** or the **company** as applicable to the **insurer** upon demand, and failing that the limit of indemnity will automatically be reduced by the amount of such advance payment.

8.10 **Allocation**

In the event of:

- (a) any **loss, defence costs and expenses, investigation defence costs and expenses, criminal prosecution defence costs and expenses, pollution defence costs and expenses, extradition proceedings defence costs and expenses, asset and liberty proceedings defence costs and expenses, public relations expenses and shareholder derivative costs** being partially excluded by the terms of this **policy**; and/or
- (b) any **notifiable claim** against a **director** being also made against the **company** and/or one or more persons who are not insured under this **policy**;



then the **insurer**, the **director** and/or the **company** shall use their best endeavours, based on established judicial decisions, to fairly and reasonably agree such an allocation of the **loss** and professional costs and expenses to the **policy** as may be appropriate and reasonable, having regard to the legal and financial exposures of the relevant parties and the proportion to which the losses and professional costs and expenses are not covered under this **policy**.

8.11 **Order of Payments**

Where there are multiple claims for indemnities under this **policy**, the **insurer** shall make payments in the order those claims are presented to it.

if it becomes apparent to the **insurer** in its absolute discretion that the limit of indemnity will not be sufficient to cover all expected payments under the **policy** then the **insurer** will make payments in the following order:

- (a) payments under insuring clause 3.1, direct to the **directors**, followed by;
- (b) payments under insuring clause 3.2, to the **company**, followed by;
- (c) any other payments to the company.

8.12 **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** or the equivalent in any other jurisdiction;
- (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**.



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