



XL Insurance

Sport & Leisure

Policy

Management Liability

Form SL-ML 0220 - CICL

February 2020



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1 Our agreement

1.1 Your policy

Thank you for choosing Axa XL.

In exchange for the payment of the premium by the **organisation** and/or **trustee**, this **policy**, its **schedule** and any attached endorsements sets out your insurance. It is a legal contract so please read it carefully. If the details are incorrect please return the **policy** as soon as practically possible to your broker or agent for alteration.

1.2 Your insurer

XL Catlin Insurance Company UK Limited.

We are 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.

1.3 Claim procedure

In the event of a **claim** or one that may result in a **claim**, please read the '**Claim** procedure' clause under the 'Conditions' section to this **policy**.

For all **claims** please contact **us** using the 'Claims notification' information stated in the 'Schedule'. **We** will be able to deal with the **claim** more effectively and speedily if the **organisation** and/or **trustee** provide the 'Policy number' shown on the **schedule** on first contact.

1.4 Change in circumstances

The **organisation** and/or **trustee** must tell **us** within fourteen (14) days of becoming aware of any changes in the information provided to **us** which happens before or during any **period of insurance**.

When **we** are notified of a change **we** will tell the **organisation** and/or **trustee** 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 the **policy** or require the **organisation** and/or **trustee** to pay more for your insurance. If the **organisation** and/or **trustee** do not inform **us** about a change it may affect any **claim** made or could result in your insurance being invalid.

1.5 Fraud

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

- (a) treat this **policy** as if it never existed, or at **our** option terminate this **policy**, without returning any premium that the **organisation** and/or **trustee** have paid;
- (b) refuse any other benefit under this **policy**.

1.6 Our right to cancel

We are entitled to cancel this **policy**, if there is a valid reason to do so, including for example:

- (a) any failure by the **organisation** and/or **trustee** to pay the premium in accordance with the 'Premium payment' clause; or
- (b) a change in risk which means **we** can no longer provide the **organisation** and/or **trustee** with insurance cover; or
- (c) non-cooperation or failure to supply any information or documentation **we** request, such as details of a **claim**:

By giving the **organisation** and/or **trustee** fourteen (14) days' notice in writing. Any return of premium due to the **organisation** and/or **trustee** will be calculated at a proportional daily rate depending on how long the **policy** has been in force unless the **organisation** and/or **trustee** have made a **claim** in which case the full annual premium is due.



1.7 **Data Protection Act**

The **organisation** and/or **trustee** should understand that any information provided will be processed by **us** in compliance with the provisions of the Data Protection Act 1998 and the Data Protection Act 2018, for the purpose of providing insurance and handling **claims** and complaints, if any, which may necessitate providing such information to other parties.

1.8 **Governing law and jurisdiction**

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

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

1.9 **Rights of third parties**

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

1.10 **Sanctions**

We 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.

1.11 **Policy format**

Upon request **we** can provide braille, audio or large print versions of the **policy** and the associated documentation including the 'Key Facts document'. If the **organisation** and/or **trustee** require an alternative format the **organisation** and/or **trustee** should contact their broker through whom this **policy** was arranged.

1.12 **Questions and Complaints**

We are dedicated to providing a high quality service and **we** want to ensure that **we** maintain this at all times.

If the **organisation** and/or **trustee** 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 the **organisation** and/or **trustee** wish to make a complaint the **organisation** and/or **trustee** can do so at any time by referring the matter to:

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

Telephone Number: +44(0)20 7743 8487

E-mail: axaxlukcomplaints@axaxl.com

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

If the **organisation** and/or **trustee** remain dissatisfied after the complaints manager has considered your complaint, or the **organisation** and/or **trustee** have not received a final decision within eight (8) weeks, the **organisation** and/or **trustee** can refer their complaint to the financial ombudsman service at:

Exchange Tower
London
E14 9SR
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)

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

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 **organisation** and/or **trustee** may be entitled to compensation from the Scheme if **we** are unable to meet **our** obligations under this contract of insurance. If the **organisation** and/or **trustee** 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. All headings within the policy are included for convenience only and will not form part of this policy.

2.1 **Asset and liberty proceeding**

Asset and liberty proceeding means proceedings brought against the **trustee** by any body (including the charities commission or equivalent in any other covered jurisdiction) other than the **organisation**, so authorised for the purpose of examining the affairs of the **organisation** 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.

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 **trustee** in dealing with an **asset and liberty proceeding**, provided that such proceeding is commenced during the **period of insurance**.

2.3 **Claim**

Claim means a demand made for compensation or damages from, or an allegation of a right against, a **trustee** which is communicated to the **trustee**. 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.

2.4 **Criminal defence costs and expenses**

Criminal defence costs and expenses means **defence costs and expenses** incurred by the **trustee** in defending any criminal investigations or proceedings commenced during the **period of insurance** and brought against them 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 Bribery Act 2010. Or the equivalent in any other covered jurisdiction.

2.5 **Defence costs and expenses**

Defence costs and expenses means legal costs and expenses incurred by or on behalf of the **trustee** with **our** prior written and continuing consent. It does not include any **trustee's** or the **organisation's** own costs and expenses (including salaries) or any value attributable to the time spent by the **trustee**, **organisation** or any **employee** in dealing with a **claim**. **Defence costs and expenses** shall include premium paid for insurance instruments or for bonds which may be required.

2.6 **Employee and employment**

Employee and employment means any:

- (a) person under a contract of service or apprenticeship with the **organisation**;
- (b) person employed by labour only sub-contractors;
- (c) self-employed person;



- (d) person hired to or borrowed by the **organisation**; or
 - (e) person undertaking study or work experience, voluntary work or a youth training scheme;
- whilst working for and under the control of the **organisation** provided they are not acting as a **trustee**.

2.7 **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) harassment, including unwelcome sexual or non-sexual advances, requests for sexual favours and any unwelcome verbal, visual or physical contact of a sexual nature which:
 - (i) is explicitly or implicitly made a term or condition of **employment**;
 - (ii) creates a hostile or offensive working environment;
 - (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) wrongful termination of **employment** or refusal to hire;
- (e) adverse change in the terms and conditions of a person's **employment** in retaliation for that person's exercise of his or her rights under law or support of the rights of another.

2.8 **Excess**

Excess means the first part of each and every **claim** which shall be the responsibility of the **organisation** to pay before **we** shall have any liability to indemnify under this **policy**.

2.9 **Extradition notice**

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 United Kingdom extradition act 2003;
- (b) any associated appeal;
- (c) the equivalent of the above in any other jurisdiction;

arising from a **wrongful act**.

2.10 **Extradition proceedings defence costs and expenses**

Extradition proceedings defence costs and expenses means **defence costs and expenses** 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**.

2.11 **Identity theft claim**

Identity theft **claim** means a **claim** made by a third party to enforce an agreement entered into with another person or entity fraudulently representing themselves as a **trustee** or director in connection with the **organisation's** business notified to **us** during the **period of insurance**.

2.12 **Insurer / We / Our / Us**

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



2.13 **Investigation**

Investigation means a formal investigation, enquiry or request for information of or attendance by the **trustee**, initiated by a third party with a legal right other than the **organisation** authorised so to compel the **trustee** for the purpose of evaluating the conduct of the **trustee**.

2.14 **Investigation costs and expenses**

Investigation costs and expenses means **defence costs and expenses** incurred in the context of an **investigation** provided that such **investigation** is first commenced during the **period of insurance**.

2.15 **Loss**

Loss means an 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 the **employment** of the **organisation**.
 - (ii) any **employment** related benefits to which the **claimant** would have been entitled had the **trustee** or the **organisation** provided the **claimant** with a continuance, reinstatement or commencement of **employment**.
 - (iii) contractual damages based upon the terms of a contract of **employment**.
 - (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 persons.

2.16 **Organisation**

Organisation means the entity(ies) named in the **schedule**, including any **subsidiary**, but excluding any firm or company acting in their capacity as liquidator, external auditor, receiver or administrative receiver.

2.17 **Outside trustee**

Outside trustee means a **trustee** acting in the capacity of a trustee, committee member, governor or director formally appointed on the written authority and request of the **organisation** to the board or equivalent position in any organisation in which the **organisation** holds 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) the **organisation**; or
- (b) any entity that:
 - (i) has its securities listed or traded on any exchange; or
 - (ii) possesses any tangible or intangible asset located within the USA and/or Canada.

2.18 **Pension/employee benefit scheme**

Pension/employee benefit scheme means a money purchase (defined contribution) pension or employee benefit scheme which is registered in the United Kingdom and governed by the laws of England and Wales.

2.19 **Period of Insurance**

Period of Insurance means the period shown in the schedule during which time the policy is in force.



2.20 **Policy**

Policy means this insurance contract.

2.21 **Pollution**

Pollution 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 combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

2.22 **Pollution and contamination defence costs and expenses**

Pollution and contamination defence costs and expenses means **defence costs and expenses** incurred in defending any proceedings brought against a **trustee** during the **period of insurance** in relation to any **wrongful act** involving **pollution**.

2.23 **Proposal**

Proposal means The written proposal or proposals, whether or not using a special form or including a presentation document, supplied for the insurance evidenced by this **policy**, including any statements of fact, declarations, warranties or information which **we** have relied on.

2.24 **Public relations costs**

Public relations costs means reasonable fees, costs and expenses of the public relations consultants incurred by a **trustee** with **our** prior written consent to be given at their absolute discretion where they are satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such **trustee's** reputation from a **claim** first made against the **trustee** during the **period of insurance**.

2.25 **Schedule**

Schedule means the schedule attaching to the **policy**.

2.26 **School, charity or charitable organisation**

School, charity or charitable organisation means :

- (a) a place or institution for teaching and 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 United Kingdom.

Subsidiary

2.27 Subsidiary means an entity in which the **organisation**:

- (a) owned or owns directly or indirectly 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 trustees or board of directors; or
- (c) controlled or controls alone pursuant to a written agreement with other trustees or shareholders or members the majority of the voting rights in such entity, provided that the **organisation** is also a shareholder in it;

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

2.28 **Total gross assets**

Total gross assets means the total gross assets of the **organisation** and its **subsidiaries** as shown in its audited consolidated group accounts most recently preceding the **period of insurance**.



2.29 **Trustee**

Trustee means:

- (a) any natural person who is, was, or becomes a trustee, committee member, governor or director or officer of the **organisation** during the **period of insurance** or holds any equivalent position in any jurisdiction;
- (b) any natural person who is, was, or becomes an **employee** of the **organisation** during the **period of insurance**:
 - (i) acting at the specific prior written request of the **organisation** 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 Act 2004 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 2.29 (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.

2.30 **Wrongful Act**

An 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 **trustee** acting in his or her capacity as:

- (a) a trustee or director or officer of the **organisation**; or
- (b) a trustee or director or administrator of a **pension/employee benefit scheme** of the **organisation**.



3 Insuring clauses

3.1 Trustee's liability

We will pay on behalf of the **trustee** all **loss** that the **trustee** is legally liable to pay 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.

3.2 Organisational reimbursement

We will pay on behalf of:

- (a) the **organisation** any **loss** that the **organisation** is legally required or permitted to pay the **trustee** as advancement or indemnity;
- (b) the **organisation** any such **criminal defence costs and expenses** that the **organisation** is legally required or permitted to pay the **trustee** as advancement or indemnity;

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.

3.3 Defence and investigation costs

We will pay on behalf of the **trustee**:

- (a) **defence costs and expenses** in the defence, **investigation** or settlement of any **claim** which falls to be dealt with under the operative clause 3.1 and 3.2;
- (b) **defence costs and expenses** in the **investigation** of any circumstance(s) notified to us under the notification condition which is (or are) likely to give rise to a **claim**;
- (c) defence costs and expenses in the defence or investigation of an identity theft claim;
- (d) **investigation costs and expenses**;
- (e) **criminal defence costs and expenses**;
- (f) **pollution and contamination defence costs and expenses**;
- (g) **extradition proceedings defence costs and expenses**;
- (h) **asset and liberty proceedings defence costs and expenses**;
- (i) **public relations costs**.

3.4 Employment Practices Wrongful Act

Cover in respect of insuring clauses 3.1, 3.2 and 3.3 above relating to any **employment practices wrongful act** shall be subject to a sub-limit of GBP 500,000.



4 Extensions

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

4.1 Additional limit

In the event that payments are made exhausting the limit of indemnity and all other applicable insurance policies operating in excess of this **policy**, and any other source available to provide indemnification for **loss** to the **trustee** has also been exhausted, then **we** agree to provide to each **trustee** an additional limit of indemnity for any subsequent **claim** made within the **period of insurance**. Each such additional limit of indemnity is subject to the aggregate limit for all **trustees** of the amount stated in the **schedule**.

provided that:

- (a) the **claim** is brought against a **trustee**;
- (b) the **claim** is payable under 'Insuring clause 3.1'.

4.2 Automatic acquisition cover

This **policy** provides automatic cover for **loss** arising out of a **claim** against any **trustee** of any newly created or acquired **subsidiary**, including by merger, provided:

- (a) the **total gross assets** of the **organisation** at the commencement of the **period of insurance** are not increased by the acquisition or creation of such **subsidiary** or **subsidiaries** by more than twenty five (25%) percent; and
- (b) any wrongful act takes place while the subsidiary is a subsidiary of the organisation.

This extension shall not apply to any **trustee** of a new **subsidiary** that:

- (c) has its securities listed or traded on any exchange; or
- (d) 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 4.2 (a) or (b) above, then the **organisation** 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.

4.3 Breach of confidentiality

We shall pay the **organisation** in respect of any settlement, damages, interest, claimant's costs and **defence costs and expenses** arising from any demand first made against the **organisation** and notified to **us** during the **period of insurance** which arises out of the activities of the **organisation** by reason of any unintentional breach of confidentiality or unintentional libel or slander committed by the **organisation, trustee** or any **employee**.

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

- (a) any other potentially applicable cover, whether or not it actually responds; and
- (b) the **excess** stated in the **schedule**.

4.4 Data protection

We shall pay the **organisation** for **defence costs and expenses** resulting from any prosecution first brought against the **organisation** and/or any **trustee** and notified to **us** during the **period of insurance** which arises out of the activities of the **organisation** in respect of any offences or alleged offences under sections 21(1), 21(2), 22(6) or 47(1) of the Data Protection Act 1998.

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

- (a) any other potentially applicable cover, whether or not it actually responds; and
- (b) the **excess** stated in the **schedule**.



4.5 **Discovery**

In the event that, on the expiry of the **period of insurance**, this **policy** is not renewed or replaced with any other policy cover broadly equivalent to this **policy** in scope, there has not been an insolvency practitioner (or equivalent) appointed as a liquidator, administrator or receiver (or equivalent) of the **organisation** or a merger, consolidation or acquisition as detailed in the takeovers and mergers clause 4.12, then the **trustee** may purchase a discovery period of twelve (12) or twenty four (24) months immediately following the **period of insurance** so that for the purposes of 'Insuring clause 3.1', any **claim** made in the discovery period will be treated to have been first made during the **period of insurance**. The right to purchase the discovery period shall terminate unless **we** receive within thirty days of the expiration of the **period of insurance** written notice of such election together with the additional premium due.

The discovery period shall be subject to the following conditions

- (a) cover shall apply only in relation to a **claim** arising out of a **wrongful act** occurring prior to the expiry of the **period of insurance**; and
- (b) there is no cover for any **claim** arising out of a **wrongful act** occurring after the expiry of the **period of insurance**; and
- (c) the limit of indemnity for the **period of insurance** including the discovery period shall remain as set out in the **schedule**; and
- (d) there is no cover unless payment of an additional premium equal to fifty (50%) percent for twelve (12) months or one hundred (100%) percent for twenty four (24) months of the annual premium shown in the **schedule** is made within thirty (30) days of the expiry of the **period of insurance**; and
- (e) cover shall automatically lapse upon the **trustee** or the **organisation** effecting a trustee liability or directors and officers **policy** cover broadly equivalent to this **policy** in scope; and
- (f) the premium for this extension is fully earned and non-refundable.

4.6 **Emergency defence costs**

In the event the **trustee** is unable to contact **us** or **our** representatives to obtain consent to authorise **defence costs and expenses** following a **claim**, then, in relation to any **claim** that may be covered by 'Insuring clause 3.1', **we** agree to reimburse the **trustee** for emergency **defence costs and expenses** incurred during the period of up to fourteen (14) days from the date the **claim** was first made and up to the amount stated in the **schedule**.

4.7 **Fidelity**

We shall pay the **organisation** for any direct loss of money or other property belonging to the **organisation** first discovered by the **organisation** 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**. Such indemnity shall only apply 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 the **organisation** or to make an improper financial gain for themselves or for an identified third party, provided that:

- (a) the **organisation** will not be indemnified for any loss of money or other property resulting from dishonest, fraudulent, criminal or malicious act(s) or omission(s) perpetrated after the **organisation** could reasonably have discovered or suspected improper conduct on the part of the relevant **employee**.
- (b) any monies which but for such dishonest, fraudulent, criminal or malicious act(s) or omission(s) would be due to the **organisation** or any monies of any person committing or colluding in any dishonest, fraudulent, criminal or malicious act(s) or omission(s) shall be deducted from any amount payable under this extension.
- (c) 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 **excess** stated in the **schedule**.



4.8 **Loss of documents or data**

We shall pay the **organisation** for:

- (a) costs incurred with **our** prior written consent for, repair, replacement or reconstitution of; and
- (b) (any settlement, damages, interest and claimant's costs arising from any negligent act error or omission involving

any **documents or data** which have been unintentionally destroyed, damaged, lost or mislaid during the **period of insurance** (and which after diligent cannot be found)

for the purposes of this extension "**documents or data**" mean 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 the property of the **organisation** or are in the **organisation's** care custody or control.

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 **excess** stated in the **schedule**.

4.9 **Outside boards**

This **policy** shall extend to any **wrongful act** committed by a **trustee** in their 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 payable by the outside entity.
- (b) any other potentially applicable cover, whether or not it actually responds.

4.10 **Personal appointments**

This **policy** 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 payable by the school, charity or charitable organisation to the trustee; and
- (b) any other potentially applicable cover, whether or not it actually responds.

provided that:

- (i) the **trustee** is formally appointed on written authority; and
- (ii) the maximum aggregate payable by **us** shall not exceed the amount stated in the **schedule**.

4.11 **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 any **trustees** who had voluntarily retired or resigned from the **organisation** during the **period of insurance** or a previous **policy** with **us** which is linked by continuous renewal to this **period of insurance** shall automatically have a discovery period of seventy two (72) months immediately following the date of retirement in respect of any **claim** covered under insuring clause 3.1. Any **claim** made in this automatic discovery period will be treated to have been first made during the **period of insurance** and shall be subject to the following conditions:

- (a) cover shall apply only in relation to a **claim** arising out of a **wrongful act** occurring prior to the date of their voluntary retirement or resignation; and
- (b) the maximum aggregate payable by **us** shall not exceed the amount stated in the **schedule**; and



- (c) the automatic discovery period will run concurrently with any other discovery period; and
- (d) cover shall lapse in the event that the **trustees** who had voluntarily retired or resigned from the **organisation** effects a trustee liability or directors and officers **policy** cover broadly equivalent to this **policy** in scope; and

this extension does not apply to any **trustee** who:

- (i) has been or is disqualified from holding the position of trustee or director; or
- (ii) has left the **organisation** as a result of a merger, consolidation or acquisition as detailed in the takeovers and mergers run-off clause 4.12; or
- (iii) has left the **organisation** as a result of the appointment of an insolvency practitioner (or equivalent) appointed as a liquidator, administrator or receiver (or equivalent) of the **organisation**.

4.12 **Takeovers and mergers run-off**

If during the **period of insurance** the **organisation** merges with or consolidates into another organisation where the other organisation or person assumes the right to appoint or remove the majority of the **organisation's** trustees or board of directors or assumes de-facto control of the **organisation**:

- (a) the **policy** shall thereafter apply only to **claims** resulting from **wrongful acts** occurring prior to the effective date of such merger or consolidation; or
- (b) the **organisation** may cancel the remainder of this **policy** on behalf of the **organisation** and all **trustees** by sending written notice to **us** at the address shown in the **schedule**, stating the date from which the cancellation is to take effect; or
- (c) the **organisation** may request that the **policy** be extended for up to seventy two (72) months to cover **wrongful acts** occurring prior to the effective date of such change in control. such extension will be at **our** sole discretion and may be subject to additional and altered terms and conditions of this **policy** including the charging of an additional premium, and:
 - (i) clauses 4.5 - Discovery and 4.11 - Retirement run-off will not apply to any such extension;
 - (ii) cover shall lapse in the event that the **organisation** effects a trustee liability or directors and officers **policy** cover broadly equivalent to this **policy** in scope; and
 - (iii) cover shall not be provided to any **trustee** who has been or is disqualified from holding the position of trustee or director.



5 Limit of Indemnity

- 5.1 Notwithstanding the additional limit (clause 4.1), the aggregate limit set out in the **schedule** is the maximum aggregate amount payable by **us** under clauses 3 (insuring clauses) and 4 (extensions) of this **policy** (including in respect of any **claims** notified during any discovery period) irrespective of the number of **claims**.
- 5.2 The limit of indemnity applicable to the operative clauses and each extension shall be as stated in the **schedule**.
- 5.3 Any payment in respect of insuring clauses 3.1, 3.2 or 3.3 and extensions clauses 4.2 to 4.12 inclusive shall erode the limit of indemnity. Once the limit of indemnity is completely eroded then, subject to the additional limit (clause 4.1) **we** shall have no further liability under this **policy**.
- 5.4 The amount payable by **us** in respect of operative clauses 3.1(c) (iii), (vi), (viii), (ix) or extensions 4.1, 4.6, 4.7, 4.8, 4.10 and 4.11 shall not exceed the sub-limits stated in the **schedule** and this policy. These sub-limits are each aggregate limits and form part of the limit of indemnity. Once such sub-limit or the limit of indemnity is completely eroded then, subject to the applicability of any additional limit (clause 4.1) **we** shall have no further liability under this **policy**.
- 5.5 If the additional limit (clause 4.1) applies then each and every further payment shall erode the aggregate sub-limit stated in the **schedule** and once that has been completely eroded **we** shall have no further liability under this **policy**.



6 Exclusions

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

6.1 Breach of copyright

any actual or alleged plagiarism or breach of copyright or trademark, patents, database rights, registered design or design rights.

6.2 Changes in or failure to provide Information

- (a) any **claim** against a **trustee**
 - (i) arising from information contained in the **proposal** that the **trustee** knew, or ought reasonably to have known, had been misrepresented or which was required by **us** prior to inception of this **policy** but which was not disclosed; or
 - (ii) arising from a material change to the information contained in the **proposal** or in relation to the information required by **us** prior to inception of this **policy** but which was not disclosed (unless such change has been agreed in writing by **us**) about which change the **trustee** knew or ought reasonably to have known.
- (b) any **claim** against the **organisation** (to the extent that cover may be provided to the **organisation** by this **policy**)
 - (iii) arising from information contained in the **proposal** that has been misrepresented or which was required by **us** prior to inception of this **policy** but which was not disclosed; or
 - (iv) arising from a material change in circumstances from the information contained in the **proposal** or in relation to the information required by **us** prior to inception of this **policy** but which was not disclosed unless such change has been agreed in writing by **us**.

6.3 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**; or
- (b) in respect of **criminal defence costs and expenses** 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.

6.4 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**.

6.5 Documents or data

any repair, replacement or reconstitution cost of any **document or data**, directly or indirectly occasioned by any government or public or local authority action or order or resulting from wear or tear, the action of vermin, gradual deterioration or magnetic flux or loss of magnetism (except where caused by lightning).



6.6 **Fidelity**

in respect of Fidelity extension 4.7:

- (a) arising from any accounting or arithmetical error or omission or unexplained shortage;
- (b) default or non-payment of any loan or other credit arrangement;
- (c) for expenses incurred in establishing the amount of any loss of money or other property;
- (d) for loss of interest;
- (e) for loss of profit; or
- (f) for any loss of money or property not belonging to the **organisation**.

6.7 **Other insurance**

any matter in respect of which the **organisation** 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 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 exceeds the limit of the other policy.

6.8 **Other pension and 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 including but not limited to the US Employee Retirement Income Security Act 1974 and UK Pensions Act 1995 and/or subsequent amending or re-enacting legislation other than any **pension and employee benefit schemes**.

6.9 **Pollution**

any pollution and any regulatory, direction or request to test for, assess, monitor, remove, contain, treat, detoxify or neutralise any **pollution**. however this exclusion shall not apply to **pollution and contamination defence costs and expenses** in relation to any **wrongful act** concerning such matters.

6.10 **Prior claims, investigations or circumstances**

- (a) any **claims, investigations** or circumstances known to the **organisation** or **trustee**; or
- (b) about which the **organisation** or **trustee** ought to have known;

prior to the commencement of the **period of insurance**.

6.11 **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.

6.12 **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.

6.13 **Property damage**

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

6.14 **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**.



6.15 **Subsidiary**

any **claim** resulting from a **wrongful act** occurring after any **subsidiary** ceases to be a **subsidiary** of the **organisation**.

6.16 **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, directly or indirectly, 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.



7 Conditions

7.1 **Advanced payment of costs**

We shall pay **defence costs and expenses** as they are incurred. however in the event and to the extent that it is finally determined that the **organisation** or **trustee** is not entitled to such payments under this **policy** the sums advanced must be repaid to **us** upon demand.

7.2 **Allocation**

In the event of any **loss** being partially covered and/or any **claim** against a **trustee** being also made against the **organisation** and/or one or more persons who is not a **trustee**, **we** shall use **our** best endeavours to agree such an allocation of **loss** to the **policy** as may be appropriate and proportional to the aggregate of insured **loss** and uninsured loss, damages and legal and other costs.

7.3 **Avoidance by the insurer**

If **we** are entitled, for any reason, to avoid this **policy** from inception, **we** may in **our** absolute discretion elect instead to give notice to the **organisation** or the **trustee** that **we** regard this **policy** as being in full force and effect, except that no cover will be given under this **policy** in respect of any **claim** that arises from or is related to the ground(s) that entitled **us** to avoid this **policy**.

7.4 **Claims procedures**

We will not make any payment under this **policy** unless all of the following conditions have been complied with:

(a) **Notification**

The following must be notified as soon as practicably possible after they come to the attention of a **trustee** or the person responsible for arranging insurance:

- (i) any **claim**; or
- (ii) any circumstance(s) of which the **organisation** or **trustee** becomes aware which is or are likely to give rise to a **claim** or an entitlement to be indemnified under this **policy**; or
- (iii) receipt of any **claim** form, particulars of **claim**, arbitration notice or any other formal document commencing legal proceedings,

notification must be made to **us** in writing at the notification address shown in the **policy schedule** during the **period of insurance** or within thirty (30) days of the end of the **period of insurance** and should include copies of all relevant documents.

(b) **No Admission of Liability**

The **organisation** or **trustee** who **claim** for indemnity under this **policy** 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(s) likely to give rise to a **claim** or any circumstance(s) where cover has been requested under this **policy**.

(c) **Duty to Co-operate**

The **organisation** and /or **trustee** shall:

- (i) provide prompt co-operation, information, documents, statements and assistance as **we** or **our** representatives, legal advisors or agents may require; and
- (ii) ensure that all documents in both paper and electronic form relevant to any **claim** or any circumstances likely to give rise to a **claim** are retained and not be intentionally destroyed or disposed of.

7.5 **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 and expenses** 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 Queen's 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.

7.6 **Insurer entitled 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 their absolute discretion.

7.7 **Misrepresentation and Non-Disclosure**

This **policy** is provided in reliance on the information received by **us** in the **proposal**.

The person completing the **proposal** must make proper enquiries ensuring that all the statements in the **proposal** are accurate and that no information has been withheld or misrepresented.

7.8 **Order of payments**

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

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

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

7.9 **Proposal operation**

The **proposal** shall operate severally in relation to each **trustee** and no statement, information or knowledge on the part of any **trustee** shall be imputed to any other **trustee** for the purposes of determining whether cover is available to that other **trustee**. This clause shall not apply to any **claim** excluded under 6.2 (a).

7.10 **Premium Payment**

Unless **we** have agreed that the premium can be paid via direct debit instalments, the premium must be paid in full to **us** within thirty (30) days of the beginning of the **period of insurance**. If **we** have not received the premium by the due date then they shall have the right to cancel this **policy** by giving fourteen (14) days written notice. In the event of cancellation, the premium is due to **us** on a pro rata basis for the **period of insurance** that **we** are on risk; however the full annual **policy** premium shall be payable to **us** in the event a **claim** has been made on the **policy** prior to the date of cancellation.

If the **insurer** has agreed to collect the premium via direct debit instalments and they not received an instalment fourteen (14) days after the due date, then **we** shall have the right to cancel this **policy** with immediate effect. In such circumstances the **period of insurance** will equate to the period for which the premium instalments have been received by the **insurer**.

The **insurer** will confirm the cancellation and amended period of insurance in writing via the **organisation's** address shown in the **schedule**.



7.11 **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 the rights of recovery of the **organisation** and/or **trustee** or any person indemnified against any third party, provided always that they 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.

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



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