DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

This policy sets out the terms upon which the insurer agrees to insure the insured in consideration of the payment of the premium. In each case, the insuring clauses and extensions are subject to all other terms, conditions and limitations of the policy.

What the insurer will do

- The insurer will provide the insured with a dedicated claims account manager, where appropriate.
- The insurer will use best endeavours to return all phone calls from the insured within one business day.
- The insurer will respond to urgent communications as a priority and within the timeframes agreed with you. The insurer will use best endeavours to respond to all other communications from the insured within five working days.
- The insurer will treat any information which an insured provides to it in connection with this policy as confidential and will not, without the prior written consent of the parent company, disclose that information to any third party, except as provided in clause G11 of this policy.
- The insurer will treat the insured with fairness, integrity and respect and, where this policy provides that the insured is required to obtain the insurer’s consent, that consent will not be unreasonably withheld, delayed or denied.

What the insured should do

- The insured should have regard to the full terms of this policy.
- Among the other provisions of the policy, the insured’s attention is drawn to the defence, settlement, and allocation provisions in Section F and the assistance, cooperation and subrogation provisions set out in Section G7 of this policy.
Schedule

Item 1. Name and address of parent company:

Item 2. Policy period:
   Inception date: XXXpm on {insert date}
   Expiration date: XXXpm on {insert date}

Item 3. Limit of liability:
   £ in the aggregate each policy period

Item 4. Retentions:
   £ each claim under Insuring Clause A2
   £ each claim under Insuring Clause A3
   £ any other loss indemnifiable by the company

With respect only to claims made in the United States of America against any of the insured persons or the company, the following retentions shall apply:

   US$ each claim under Insuring Clause A2
   US$ each claim under Insuring Clause A3
   US$ any other loss indemnifiable by the company

Item 5. Automatic Extensions of Cover (Excess Limits and Sub-limits):

   Parent company board additional excess limit:
   £

   Non-executive director additional excess limit:
   £

   All sub-limits shall form part of and not be in addition to the limit of liability

   Regulatory Crisis Costs sub-limit:
   £

   Crisis consultant Costs sub-limit:
   £

   Prosecution Costs sub-limit:
   £
Emergency Costs sub-limit:

£

Personal Liability of insured persons for Corporate Taxes sub-limit:

£

Item 6. Pending and Prior Litigation Date: (insert date)

Item 7. Notices required to be given to the insurer must be addressed to:

Attention: Professional Lines Claims Manager
XL House
70 Gracechurch Street
London EC3V 0XL
United Kingdom

Item 8. Premium

£ plus applicable taxes

Item 9. Discovery:

Length of discovery period: 365 days

Premium for discovery period: 100% of premium

Signed on behalf of XL Insurance Company plc

By: ........................................... Date: ........................................
Table of Contents

Contents
A. Insuring Clauses .................................................................................................................. 1
B. Automatic Extensions of Cover .......................................................................................... 2
C. Exclusions .......................................................................................................................... 7
D. Changes in Risk .................................................................................................................. 9
E. Limit of Liability, Indemnification and Retentions .......................................................... 11
F. Defence, Settlement and Allocation of Loss ...................................................................... 12
G. General Conditions .......................................................................................................... 14
H. Definitions .......................................................................................................................... 19
I. Complaints .......................................................................................................................... 24
A. INSURING CLAUSES

A1 INSURED PERSON COVER

The insurer shall pay on behalf of the insured persons any loss resulting from a claim first made against the insured persons during the policy period, for a wrongful act or employment practices wrongful act, except for loss which the company has paid on behalf of the insured persons as indemnification.

A2 COMPANY REIMBURSEMENT COVER

The insurer shall reimburse or pay on behalf of the company any loss which the company is required or permitted to pay as indemnification to any of the insured persons resulting from a claim first made against the insured persons during the policy period, for a wrongful act or employment practices wrongful act.

A3 COMPANY SECURITIES CLAIM COVER

The insurer shall pay the loss of the company resulting from any securities claim first made against the company during the policy period, for a company wrongful act.
B. AUTOMATIC EXTENSIONS

B1 Additional Excess Protection for Parent Company Board

In addition to the cover provided under this policy to members of the parent company board as insured persons, in the event that:

(a) the limit of liability of this policy;
(b) all other applicable management liability insurance, whether or not specifically written as excess over the limit of liability of this policy; and
(c) all other sources of indemnification for loss available to any such insured person;

have been exhausted, the insurer shall pay the loss of such insured person arising out of an unrelated claim first made against them during the policy period, up to the “parent company board additional excess limit” set out in Item 5 of the Schedule, which limit shall be in the aggregate for all such insured persons during the policy period.

B2 Additional Excess Protection for Non-Executive Directors

In addition to the cover provided under this policy to non-executive directors as insured persons, in the event that:

(a) the limit of liability of this policy;
(b) all other applicable management liability insurance, whether or not specifically written as excess over the limit of liability of this policy; and
(c) all other sources of indemnification for loss available to any non-executive director;

have been exhausted, the insurer shall pay the loss of non-executive directors arising out of a claim first made against them during the policy period, up to the “non-executive director additional excess limit” set out in Item 5 of the Schedule, which limit shall be in the aggregate for all non-executive directors during the policy period.

B3 Investigation Costs

Whether or not there has been a claim, the insurer shall pay the reasonable fees, costs and expenses, necessarily incurred, with its prior written consent, relating to the legal representation of any insured person at any investigation, once an insured person:

(a) is requested or required to attend the investigation; or
(b) is identified in writing by the official entity conducting the investigation as a target.

Routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an insured will fall outside the scope of this extension. Where the investigating official body is the Securities Exchange Commission (SEC), this extension will only apply where the insured person has been served with a subpoena or Wells Notice.

An investigation shall be deemed to be first made when the insured person is first so requested, required, identified or served.
The fees, costs and expenses covered by this extension shall not include any remuneration of any insured person, the cost of their time or costs or overheads of any company.

B4 Regulatory Crisis Costs

The insurer shall pay the reasonable fees, costs and expenses of any consultant chosen by the insured with the prior written consent of the insurer, which are necessarily incurred in responding to:

(a) a raid or on-site visit to any company which first takes place during the policy period, by any official entity that involves the production, review, copying or confiscation of files or interviews of any insured persons;
(b) a public announcement relating to an event in sub-paragraph (a) above; or
(c) the receipt by any insured during the policy period, from any official entity of a formal notice which legally compels the insured to produce documents to, or answer questions by or attend interviews with that official entity,

irrespective of whether the events in sub-paragraphs (a), (b) and (c) above fall within the definition of claim.

This extension shall apply up to the sub-limit in Item 5 of the Schedule.

Routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an insured will fall outside the scope of this extension.

B5 Crisis Consultant Costs

The insurer shall pay crisis consultant costs, necessarily incurred by the insured persons with the prior written consent of the insurer, in order to contain or limit the potentially adverse effects, including negative publicity, resulting from a claim first made against them during the policy period, or from circumstances which could reasonably give rise to a claim. This extension shall apply up to the sub-limit in Item 5 of the Schedule.

This extension of cover shall apply regardless of whether a claim is ever made against an insured person arising from such crisis and, in the case where such a claim is made, regardless of whether the amount is incurred prior to or subsequent to the making of the claim.

B6 Extradition Proceedings

The insurer shall pay the reasonable fees, costs and expenses necessarily incurred by an insured person with the prior written consent of the insurer in connection with an extradition proceeding first commenced against them during the policy period.
B7 Prosecution Costs (restriction of assets and liberty)

Whether or not there has been a claim, the insurer shall pay the reasonable legal and other professional fees, costs and expenses, necessarily incurred by an insured person with the prior written consent of the insurer to bring legal proceedings to obtain the discharge or revocation of:

(a) an order disqualifying such insured person from holding office as a company director or officer; or
(b) an interim or interlocutory order:

(i) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of such insured person; or
(ii) imposing a charge over real property or personal assets of such insured person; or
(iii) imposing a restriction of the insured person’s liberty; or
(iv) for the deportation of an insured person following revocation of an otherwise proper, current and valid immigration status for any reason other than the insured person’s finally adjudicated conviction for a crime.

In each case above, cover will only be available under this extension for orders (whether final, interim or interlocutory) issued during the policy period.

This extension shall apply up to the sub-limit in Item 5 of the Schedule.

B8 Emergency Costs

If the insurer’s written consent cannot be obtained within a reasonable time before defence costs are incurred with respect to any claim first made against an insured during the policy period, or before costs are incurred which would otherwise fall under clauses B4, B5, B6, or B7, then the insurer shall provide retrospective approval for such reasonably incurred costs up to, in the aggregate, the sub-limit in Item 5 of the Schedule, provided that the insurer is notified by the insured of such costs as soon as is reasonably practicable, and before the expiration of ten working days from when such costs were first incurred.

B9 Outside Directorships

The insurer shall reimburse or pay on behalf of any outside director, or the company in the event it indemnifies such outside director, loss resulting from a claim first made against them during the policy period, for a wrongful act or employment practices wrongful act, in their capacity as an outside director.

B10 Health and Safety

The insurer shall pay the defence costs of any insured person with respect to any claim first made against them during the policy period, alleging a breach of health and safety legislation or any similar legislation in any jurisdiction including any legislation relating to involuntary manslaughter or corporate manslaughter.
B11 Fines and Penalties

The insurer shall pay any civil fines and penalties resulting from a claim first made against the insured persons during the policy period, for a wrongful act or employment practices wrongful act, unless uninsurable as a matter of applicable law.


B12 Personal Liability of Insured Persons for Corporate Taxes

The insurer shall pay the amount arising from the personal liability of the insured persons resulting from a claim first made against them during the policy period, for unpaid taxes of the company following the appointment of a Receiver, Administrator, Administrative Receiver, Liquidator or any comparable or analogous authority or appointment with respect to the company, unless uninsurable as a matter of applicable law. This extension shall apply up to the sub-limit in Item 5 of the Schedule.

B13 Discovery Period

(a) If this policy is not renewed or replaced, and if the total premium for this policy has been paid in full, the insured will be entitled:

(i) to an automatic discovery period of 60 days; and
(ii) to purchase an optional discovery period for a longer period as specified in Item 9 of the Schedule, provided that written notice is provided to the insurer by the parent company within 30 days after the end of the policy period and any additional premium specified by the insurer is paid within 45 days of the end of the policy period. The automatic discovery period shall be part of and not in addition to any optional discovery period purchased by the insured.

(b) The discovery period is non-cancellable and the premium for the optional discovery period is deemed fully earned at the inception date of the optional discovery period.

(c) The purchase of the optional discovery period will not in any way increase the limit of liability, and any payments made with respect to claims first made during the discovery period (or any other matter for which coverage is provided during the discovery period under one of the extensions) shall be part of and not in addition to the limit of liability for all claims made during the policy period.

(d) No discovery period shall apply in the event that a change of control takes place during the policy period.

B14 Run-Off for Retired Insured Persons

Notwithstanding the provisions of clause D2(c), if this policy is not renewed or replaced, and if the total premium for this policy has been paid in full, the insurer shall provide an unlimited discovery period for any retired insured person.
B15  Heirs, Representatives, and Spouses

In the event of the death, incapacity or bankruptcy of an insured person, any claim first made during the policy period, against the estate, heirs, legal representatives or assigns of such individual for a wrongful act or employment practices wrongful act of such individual, will be deemed to be a claim made against such insured person. Coverage shall also extend to the lawful spouse or civil partner of any insured person but only to the extent the spouse or civil partner is a party to any claim solely in their capacity as a spouse or civil partner of such insured person and only for the purposes of any claim seeking damages recoverable from, or in respect of, marital community property, property jointly held by any such insured person and the spouse or civil partner, or property transferred from any such insured person to the spouse or civil partner.
C. EXCLUSIONS

For the purpose of determining the applicability of the following exclusions, the knowledge or act, error or omission of any insured person shall not be imputed to any other insured person.

The insurer shall not be liable to make any payment in connection with any claim made against an insured or in connection with any matter covered by an extension to this policy:

C1 for any actual or alleged bodily injury, sickness, disease or death of any person, or any damage or destruction of any tangible property including loss of use thereof; however, this exclusion shall not apply to:

(a) any allegations of mental anguish or emotional distress; or
(b) defence costs payable under clause B10;

C2 arising out of, based upon or attributable to an insured acting as a trustee, fiduciary or administrator of the company’s own pension, profit sharing or employee benefits programme including any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) (USA) and/or the Pensions Act of 1995 (UK) as amended or any regulations promulgated thereunder, or any similar law or regulation in any other jurisdiction;

C3 arising out of, based upon or attributable to the performance of or failure to perform professional services including any related services for any insured. However, this exclusion shall not apply to:

(a) any claim constituting a shareholder or shareholder derivative action provided that such claim is brought without the solicitation or assistance or participation (unless legally required) of any insured; or
(b) clause B3;

C4 arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or wrongful act, company wrongful act or employment practices wrongful act:

(a) underlying or alleged in any prior and/or pending litigation, or arbitration proceeding, administrative or regulatory proceeding which was brought prior to the Pending and Prior Litigation Date set forth in Item 6 of the Schedule; or
(b) which was the subject of any notice given under any other Management Liability policy, Directors and Officers liability policy or similar policy, unless such notice was provided to the insurer under an earlier policy but which was not accepted by the insurer as a valid notification, and where cover has been maintained continuously with the insurer from the inception date of the earlier policy to the end of the policy period.

C5 brought about or contributed to by any:

(a) dishonest, fraudulent or criminal act or omission of any insured or any wilful violation of any statute, rule or law; or
(b) profit or remuneration gained by any insured to which such insured is not legally entitled;
as determined by a judgment or other final adjudication (including any appeal thereof) in the underlying action or in a separate action or proceeding, or any formal admission by or on behalf of such insured, that such conduct did in fact occur.

To the extent permitted by law, clause C5(b) above will not apply to allegations in a claim against any insured person under Section 11 and/or 12 of the Securities Act of 1933 (USA), as amended, arising out of an initial or subsequent public offering of the company's securities (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933).

For the purpose of determining the applicability of clause C5(a) to the company, only knowledge or information possessed by the Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or General Counsel (or equivalent positions) of the company will be imputed to the company.

C6 brought by, on behalf of, or at the direction of the company, or an outside entity, in the United States of America, its territories or possessions, except and to the extent such claim:

(a) is brought derivatively by a security holder of the company or an outside entity who, when such claim is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of an insured person (other than an insured person engaged in whistleblowing), the company or any outside entity; or
(b) is brought by any receiver, administrator or other insolvency practitioner (or equivalent in any other jurisdiction) of the company or an outside entity, or any assignee of such person.

This clause C6 shall not apply with respect to defence costs.
D. CHANGES IN RISK

D1 New Subsidiaries

(a) If during the policy period, the company acquires a subsidiary, or acquires any entity by merger, consolidation or otherwise, coverage shall be provided with respect to such new subsidiary or entity for any loss resulting from a claim involving acts or conduct committed after the completion of such acquisition.

(b) If the newly acquired entity or subsidiary:

(i) exceeds twenty five percent (25%) of the total assets of the company, as represented in the company's most recent audited consolidated financial statements; or

(ii) is domiciled or has equity securities issued or traded in the United States of America;

then, coverage under this policy with respect to such entity or subsidiary shall be provided for a period of sixty (60) days in respect of acts or conduct that occurred after the completion of the acquisition. Coverage beyond the sixty (60) day period will be provided only if:

(i) the insurer receives written notice containing full details of the acquisition; and

(ii) the insurer at its sole discretion, agrees in writing to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.

(c) With respect to the acquisition, merger, consolidation or otherwise of any entity, or subsidiary as described in clauses D1(a) and (b) above, there will be no coverage available under this policy in connection with such entity, subsidiary, or any act or conduct allegedly committed at any time during which such entity or subsidiary is not an insured.

D2 Change in Control

(a) If, during the policy period, there is any change of control, the insurer shall not be liable for or make any payment in connection with:

(i) any claim alleging, arising out of, based upon or attributable to any act or omission occurring after the change of control;

(ii) any event which gives rise to a potential insurer liability under clauses B3, B4, B6, or B7 and which has happened after the change of control.

(b) The entire premium for the policy will be deemed to be fully earned immediately upon a change of control.

(c) Cover for any claim against, investigation into or proceeding against any subsidiary or any insured person shall only apply in respect of wrongful acts, employment wrongful acts and company wrongful acts occurring while that entity is a subsidiary and whilst that insured person served in an insured person capacity.
(d) If, during the policy period any entity ceases to be a subsidiary, the coverage provided under this policy shall continue to apply to the insured persons who, because of their service with such subsidiary, were covered under this policy, but only with respect to acts or conduct that occurred or allegedly occurred prior to the time such subsidiary ceased to be a subsidiary.

D3 New Outside Directorships

If, during the policy period, the company requests that a natural person serve either:

(a) as a director, officer, or trustee (or functionally equivalent role); or
(b) in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an insured person of the company, regardless of the name or title by which such position is designated;

of an organisation that does not currently fall within the definition of an outside entity, then coverage shall apply as if such natural person is an outside director for a period of sixty (60) days.

D4 New Offering of Securities

If, during the policy period, the company undertakes an offering of debt or equity securities in the United States of America, except where such securities were purchased or sold pursuant to Rule 144A of the Securities Act of 1933, then the insurer shall not be liable to make any payment for loss in connection with any claim based upon, arising out of or in consequence of such offering unless:

(a) the insurer receives prior written notice containing details of the offering; and
(b) the insurer at its sole discretion, has agreed in writing to provide such additional coverage upon the terms, conditions, limitations, and additional premium which it deems appropriate.
E. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

E1 Save as set out in any applicable sub-limit, the insurer shall pay the amount of loss in excess of the applicable retention(s) set forth in Item 4 of the Schedule up to the limit of liability.

E2 The amount set forth in Item 3 of the Schedule shall be the maximum aggregate limit of liability of the insurer under this policy except with respect to the additional excess limits specified in clauses B1 and B2. Any payment by the insurer shall reduce the limit of liability accordingly by the paid amount. The sub-limits of liability specified in Item 5 of the Schedule are part of and not in addition to the limit of liability and is the maximum amount the insurer will pay with respect to the cover to which it applies.

E3 With respect to the company’s indemnification of insured persons, the certificate of incorporation, charter, by-laws, articles of association, or other organisational documents of the parent company, each subsidiary and each outside entity, will be deemed to permit indemnification of the insured persons to the fullest extent allowable by law.

E4 Claims arising from the same interrelated wrongful acts shall be deemed to constitute a single claim and shall be deemed to have been made at the time at which the earliest such claim is made or deemed to have been made pursuant to clauses G1(a), (b) or (c) below, if applicable.

E5 The retention applicable to Insuring Clause A2 shall apply to any loss as to which indemnification by the company or outside entity is legally required or permitted, whether or not actual indemnification is made unless such indemnification is not made by the company, or outside entity solely by reason of its financial insolvency in which case no retention shall apply.

E6 If a payment is made by the insurer to any insured person under this policy as to which indemnification by the company was legally required or permitted but not made by the company, the company agrees to pay to the insurer the amount of the retention applicable to Insuring Clause A2. The insurer shall be entitled to set off such amounts against any sums due from the insurer to the company.

E7 If different retentions are applicable to different parts of any loss, the applicable retention(s) will be applied separately to each part of such loss, and the sum of such retention(s) will not exceed the largest applicable retention set forth in Item 4 of the Schedule.

E8 If the limit of liability and the additional excess limits specified in clauses B1 and B2, are exhausted by the payment of loss, the premium for this policy will be deemed fully earned, and all obligations of the insurer under this policy will be completely fulfilled and exhausted, and the insurer will have no further obligations of any kind whatsoever under this policy.
F. DEFENCE, SETTLEMENT AND ALLOCATION OF LOSS

F1 It shall be the duty of the insured to defend any claim. The insurer shall have the right and be given the opportunity to participate with each insured in the defence and settlement of any claim that appears likely to involve the insurer.

F2 The insurer shall not be obliged to pay any defence costs unless the insurer has provided prior written consent to the defence costs being incurred except as provided for in clause B8, such consent not to be unreasonably withheld, delayed or denied.

F3 The insurer shall not be obliged to make any payment in connection with any liability admitted by the insured nor any settlement agreed by the insured unless the insurer has provided prior written consent to the liability being admitted or settlement being agreed, such consent not to be unreasonably withheld, delayed or denied.

F4 Solely with regard to clause B4, the insured shall not be required to receive the insurer's consent prior to making any formal written representation to the Serious Fraud Office (UK), Office of Fair Trading (UK), Financial Services Authority (UK) or Serious Organised Crime Agency (UK) or principal financial regulator, provided however that, as soon as legally permitted by the Serious Fraud Office (UK), Office of Fair Trading (UK), Financial Services Authority (UK) or Serious Organised Crime Agency (UK) or principal financial regulator the insured shall seek the consent of the insurer and shall comply with this section F.

F5 Upon the written request of an insured, the insurer will advance defence costs on a current basis in excess of the applicable retention, if any, before the disposition of the claim for which this policy provides coverage. If it is finally determined that the loss incurred is not covered under this policy, then the insured shall repay such loss paid to or on behalf of the insured.

F6 In the event the company or the outside entity refuses, in writing, to indemnify the insured persons even if it is legally required or permitted to do so, the insurer shall advance defence costs to the insured persons and the provisions of clauses E5 and E6 above shall apply.

F7 If both loss covered by this policy and loss not covered by this policy are incurred, either because a claim made against the insured contains both covered matters and matters not covered by this policy, or because a claim is made against both the insured and others (including the company for claims other than securities claims) not insured under this policy, the insured and the insurer will use their best efforts to determine a fair and appropriate allocation of loss between that portion of loss that is covered under this policy and that portion of loss that is not covered under this policy. Additionally, the insured and the insurer agree that in determining a fair and appropriate allocation of loss, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defence and/or settlement of the claim by, the insured and others.
F8  In the event that an agreement cannot be reached between the **insurer** and the **insured** as to an allocation of **loss**, as described in clause F7 above, then the **insurer** shall advance that portion of **loss** which the **insured** and the **insurer** agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this policy and applicable law.
G. GENERAL CONDITIONS

G1 Notice

(a) The **insured** must give the **insurer** written notice of any;
   (i) **claim** first made against the **insured**; or
   (ii) **investigation**, event, or proceeding under clauses B3, B4, B6 and B7;

during the **policy period**, as soon as practicable and, in any event, within sixty
(60) days of the end of the **policy period**, or within such additional **discovery period** as may apply. If the **insured** does not give notice to the **insurer** in compliance with this clause, the **insurer** shall have no liability under this policy in respect of that **claim**.

(b) During the **policy period**, the **insured** may also notify the **insurer** of any fact or circumstance which may reasonably give rise to a **claim**. Such notice must include the reasons why the **insured** reasonably anticipates that the fact or circumstance may give rise to a **claim** with full particulars of the dates, acts and persons involved.

(c) Any **claim** made after expiry of the **policy period** which alleges, arises out of, is based upon or attributable to any **interrelated wrongful act** which was the basis of:
   (i) a **claim** first made during the **policy period** (or applicable **discovery period**) which has been notified to the **insurer** in accordance with clause G1(a) above; or
   (ii) a fact or circumstance which has been notified to the **insurer** in accordance with clause G1(b) above;

will be treated by the **insurer** as having been notified during the **policy period**.

(d) All notices must be sent by certified mail or the equivalent to the address set forth in Item 7 of the Schedule.

G2 Other Insurance

(a) All **loss** payable under this policy will be specifically excess of and will not contribute with any other insurance, including any insurance that would have been valid and collectable in the absence of this insurance. This policy will not be subject to the terms of any other insurance policy.

(b) All coverage under this policy for **loss** from **claims** made against the **insured persons** while acting in their capacity as an **outside director**, will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **insured person** from such **outside entity** or its insurers by reason of their service as such.
G3 Priority of Payments

If loss shall be payable under more than one of the Insuring Agreements, then the insurer shall, to the maximum extent practicable and subject at all times to the insurer’s maximum aggregate limit of liability as set forth in Item 3 of the Schedule, pay such loss as follows:

(a) first, the insurer shall pay that loss, if any, which the insurer may be liable to pay on behalf of the insured persons under Insuring Clause A1;

(b) second, the insurer shall pay that loss, if any, which the insurer may be liable to pay on behalf of the company under Insuring Clause A2; and

(c) third, the insurer shall make such other payments which the insurer may be liable to make under Insuring Clause A3 or otherwise.

G4 Cancellation

The insurer may only cancel this policy for non-payment of premium. The insurer will provide not less than twenty (20) days written notice stating the reason for cancellation. If cancelled, the policy will be cancelled with effect from inception. Notice of cancellation will be sent to the parent company as the agent of record for the insured, if applicable. If premium is paid during the 20 days’ notice period, the notice of cancellation will be revoked.

G5 Remedies for Misrepresentation and/or Non-Disclosure

The insurer irrevocably waives any and all rights and remedies it may have as a result of any misrepresentation or non-disclosure including, but not limited to, any right it may have to rescind or avoid this policy, except that the insurer shall have no liability in relation to:

(a) an insured person who was fraudulent in relation to the misrepresentation or non-disclosure in question; or

(b) the company in respect of Insuring Clause A3.

G6 Severability

The proposal shall be construed as a separate proposal by each insured person. With respect to the information and statements contained in such proposal or otherwise provided to the insurer when the policy was placed, no statement or knowledge possessed by any one insured person shall be imputed to any other insured person for the purpose of determining the availability of cover for any other insured person. The acts, omissions, knowledge, or warranties of any insured person shall not be imputed to any other insured person with respect to the cover available under this policy.
G7 Assistance, Cooperation and Subrogation

(a) The **insured** agrees to provide the **insurer** with all information, assistance and cooperation that the **insurer** may reasonably request, and further agrees that they will do nothing which in any way increases the **insurer's** exposure under this policy or in any way prejudices the **insurer's** potential or actual rights of recovery.

(b) In the event of any payment under this policy, the **insurer** shall be subrogated to all of the potential or actual rights of recovery of the **insured**. The **insured** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the **insurer** to bring suit in their name, and will provide all other assistance and cooperation which the **insurer** may reasonably require.

G8 Policy Interpretation

(a) Any interpretation of this policy relating to its construction, validity or operation shall be determined in accordance with the laws of England and Wales.

(b) This policy, its Schedule and any endorsements are one contract in which, unless the context otherwise requires:
   (i) headings are descriptive only, not an aid to interpretation;
   (ii) references to specific legislation include amendments to and re-enactments of that legislation and equivalent legislation in the relevant jurisdiction; and
   (iii) references to positions, offices or titles shall include their equivalents in any jurisdiction.

G9 Assignment and Changes to the Policy

(a) Neither this policy nor any right under it may be assigned without the prior written consent of the **insurer**.

(b) No amendment to this policy will be effective unless it is in writing.

G10 Authorisation and Notices

It is understood and agreed that the **parent company** will act on behalf of the **company** and the **insured persons** with respect to:

(a) the payment of premium;
(b) the receiving of any return premium that may become due under this policy; and
(c) the receiving of all notices from the **insurer**.

Subject to the other provisions of this policy, this clause G10 does not preclude an **insured person** from notifying the **insurer** in accordance with clause G1.
G11 Confidentiality

(a) The insurer will treat as confidential all information provided to it by the insured in connection with this policy or any claim or potential claim under this policy and will not, without the prior consent of the parent company, disclose any such information to any third party. However, the insurer shall be entitled, without the consent of the parent company, to disclose any confidential information to:
(i) any director, officer, employee, agent, reinsurer or professional adviser of the insurer and/or its group companies or Xchanging Claims Services Limited or any loss adjuster appointed by the insurer in dealing with the insurance of the insured; or
(ii) any person in order to comply with any legal or regulatory requirement; or
(iii) a court, mediator, or arbitrator to whom matters are referred in connection with this policy or with any reinsurance of this policy.

(b) The insurer will not be required to treat as confidential any information provided to it by an insured if that information:
(i) is in the public domain, other than by means of the insurer having disclosed it; or
(ii) was in the insurer's possession prior to it being provided by the insured.

(c) The insurer will cooperate with the insured in preserving the confidentiality of the confidential information and will inform the insured in the event that the insurer is asked by a third party other than the parties listed in this clause to produce any confidential information.

(d) It is agreed that, if the insured is advised by its lawyers in respect of any claim or potential claim under this policy that a separate confidentiality agreement is required to preserve common interest privilege between the insurer and any insured, the provisions of that confidentiality agreement, once agreed, will supersede the provisions of this clause G11.

G12 Contracts (Rights of Third Parties) Act 1999
A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exist or is available apart from that Act.

G13 Mediation, Arbitration and Law

(c) In the event of any dispute arising between the insurer and any insured regarding any aspect of this policy (including its validity), the dispute shall be referred to arbitration under the Insurance & Reinsurance Arbitration Society (ARIAS (UK)) Arbitration Rules by either party in accordance with the following terms:
(i) The arbitration tribunal shall consist of three arbitrators, one to be appointed by the insured involved in the arbitration, one to be appointed by the insurer and the third to be appointed by the two appointed arbitrators. The third member of the arbitration tribunal shall be appointed as soon as practicable (and no later than twenty-eight (28) days) after the appointment of the two party-appointed arbitrators. The arbitration tribunal shall be constituted upon the appointment of the third arbitrator.
(ii) The arbitrators shall be persons (including those who have retired) with not less than ten (10) years’ experience of insurance within the industry or as lawyers or other professional advisers serving the industry.

(iii) Where a party fails to appoint an arbitrator within twenty-eight (28) days of being called upon to do so, the other party, having duly appointed his arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator. If the party in default does not within seven (7) clear days of that notice being given make the required appointment and notify the other party that he has done so, the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.

(iv) The arbitration tribunal may at its sole discretion make any orders and directions that it considers necessary for the final determination of the matters in dispute. The arbitration tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making those orders or directions. The parties will retain their statutory rights to appeal any award made by the arbitration tribunal. The seat of arbitration shall be London, England and the law governing the arbitration shall be under the law of England & Wales.

(d) In the event that clause G13(a) is unenforceable for any reason, the jurisdiction of the High Court of England and Wales will apply to any dispute between the insurer and the insured.

(e) If the parties so agree, they may refer the matter at any time for resolution through mediation before a mutually agreed mediator.
H. DEFINITIONS

In this policy the following words shall have the definitions that follow:

H1 “bail bond costs” means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an insured person’s contingent obligation for bail required by a court in respect of any claim.

H2 “change of control” means:

(a) the parent company consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
(b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the parent company or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the parent company;
(c) the appointment of a receiver, liquidator or administrator in respect of the company, but only in relation to that company; or
(d) a company becomes a subsidiary of an entity not insured by this policy, or becomes controlled by another entity by virtue of any law.

H3 “claim” means:

(a) a written demand for monetary or non-monetary relief;
(b) any civil proceeding in a court of law or equity, or arbitration;
(c) any criminal proceeding which is commenced by an indictment or similar proceeding;
(d) in respect of an insured person only, a formal civil, criminal, administrative regulatory proceeding or formal investigation of an insured person which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such insured person as a person or entity against whom a proceeding as described in clause H3(b) or (c) above may be commenced, including with respect to any employment practices wrongful act any proceeding before any government authority regulating employment practices; or
(e) a securities claim or an employment practices claim.

H4 “company” means the parent company and any subsidiary created or acquired on or before the inception date set forth in Item 2 of the Schedule or during the policy period, subject to the provisions of Section D.

H5 “company wrongful act” means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the company in connection with a securities claim.

H6 “crisis consultant costs” means any reasonable professional fees, costs or expenses of any reputable, specialist, or professionally qualified:

(a) public relations firm or consultant;
(b) crisis management firm; or
(c) law firm or tax advisor.
“**defence costs**” means reasonable legal fees and expenses necessarily incurred in the defence of any **claim**, including **bail bond costs**. **Defence costs** does not include the **company’s** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers or employees.

“**discovery period**” means the period immediately following expiry of the **policy period** during which written notice may be given to the **insurer** of:

(a) any **claim** first made during such period for any **wrongful act**, **company wrongful act**, or **employment practices wrongful act**, which occurred during the **policy period**; or

(b) any other **investigation**, event, or proceeding as described in Section B.

“**employment practices claim**” means a **claim** alleging an **employment practices wrongful act**.

“**employment practices wrongful act**” means any employment related actual or alleged tortious act or omission, breach of statutory provision or breach of common law relating to an employee, including but not limited to:

(a) failure to provide equal opportunity of employment or pay;

(b) discrimination;

(c) harassment (sexual or otherwise, and including but not limited to harassment in the form of workplace bullying, or by way of electronic communication including social networking internet sites);

(d) wrongful dismissal or treatment;

(e) retaliation;

(f) inducement to become or remain as an employee based upon an erroneous job description;

(g) defamation, misrepresentation, negligent misstatement, wrongful failure to employ or promote, deprivation of a career opportunity, or wrongful discipline;

(h) violation of an employee’s civil or human rights, or violations of any similar statutory provision arising out of acts or omissions by an **insured** or a person for whom the **insured** is legally responsible;

(i) claims arising from breach of data protection or privacy obligations;

(j) failure to allow an employee to exercise a statutory right; or

(k) failure to provide or enforce corporate policies or procedures to prevent or address any of the above.

“**extradition proceeding**” means any proceeding against an **insured person** including any related appeal, any judicial review applications or any challenge or appeal of any extradition decision by any governmental authority, or any application to the European Court of Human Rights or similar court in respect of any proceedings to remove an **insured person** to another territory against their will.

“**insured**” means the **insured persons** and the **company**.

“**insured person**” means:

(a) any past, present or future director or officer, member of the Board of Managers, or **non-executive director** of the **company**, or the equivalent in any jurisdiction;
(b) any past, present or future de facto or shadow director while acting in a capacity as a director or officer of the company as defined in sections 250 and 251 of the Companies Act 2006 (or equivalent in any jurisdiction), other than a person acting in the capacity of administrative receiver, administrator, receiver, liquidator, or an external auditor appointed under sections 485 or 489 of the Companies Act 2006, or equivalent in any jurisdiction;

(c) any past or present employee of the company to the extent:
   (i) the subject claim is a securities claim;
   (ii) the subject claim is an employment practices claim;
   (iii) such employee is acting in a managerial or supervisory capacity or has been authorised to perform one or more Significant Influence Functions under Section 59 of the Financial Services and Markets Act 2000; or
   (iv) such employee is named as a co-defendant along with an insured person as defined in clause H13(a), (b) or (c(iii)) above; or

(d) any outside director;

but only when and to the extent that such insured person is acting for and on behalf of the company in any of the capacities referred to in clause H13(a), (b), or (c(iii)) above.

H14 "insurer" means XL Insurance Company plc.

H15 "interrelated wrongful acts" means any wrongful act(s), company wrongful act(s), or employment practices wrongful act(s) arising out of, based upon, or attributable to the same originating cause, source or event.

H16 "investigation" means a hearing, inquiry, examination or investigation ordered by any official entity during the policy period, regarding the affairs of the company or an insured person.

H17 "investment vehicle" means any collective investment arrangement, the purpose of which is to enable those taking part in the arrangement to participate in or receive profits or income arising from the acquisition, holding, management or disposal of assets or sums paid out of such profits or income, and in which some or all of the persons who participate do not have day-to-day control over the management of the assets.

H18 "joint venture" means any corporation, partnership, joint venture, association or other entity, other than a subsidiary, in which the parent company, either directly or through one or more subsidiary(ies) owns or controls not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an insured person of the company, regardless of the name or title by which such position is designated.

H18 "limit of liability" means the amount set out in Item 3 of the Schedule.

H19 "loss" means amounts which the insured is legally obligated to pay as damages, judgments or settlements, or defence costs, or other amounts payable under the extensions to this policy, including interest and punitive or exemplary damages, and the multiplied portion of any damage award in excess of the retention. Loss shall not include:

(a) fines, penalties or taxes imposed by law, except for punitive or exemplary damages and as provided in clauses B11 and B12;
(b) employment-related compensation, wages or benefits; or
(c) matters which are uninsurable under applicable law.

The insurer shall not assert that loss attributable to allegations of violations of Section 11 or 12 of the Securities Act of 1933 (US) (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933) constitute uninsurable loss.

H20 “non-executive director” means any natural person who serves as a director of the company and who is not an employee of the company.

H21 “non-indemnifiable loss” means loss in respect of which the company or outside entity is not legally required or permitted to indemnify the insured person.

H22 “non-profit entity” means any corporation, trust, fund, foundation, community or industry association or registered charity other than the parent company or any subsidiary, and whose governing documents prevent it from distributing profits or assets for the benefit of members, whether or not it is exempt from the payments of income tax under any law, regulation or bye-law, whether national, federal, state, territorial, provincial or local, anywhere in the world.

H23 “official entity” means any regulator, government, government body, governmental or administrative agency, any self-regulatory body recognised in that capacity as such under applicable law or official trade body.

H24 “outside director” means any natural person who at the specific request of the company is serving:

(a) as a director, officer, trustee, regent or governor of a non-profit entity; or
(b) in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an insured person of the company, regardless of the name or title by which such position is designated, of an outside entity.

H25 “outside entity” means:

(a) any non-profit entity;
(b) any joint venture; or
(c) any scheduled outside entity.

H26 “parent company” means the entity named in Item 1 of the Schedule.

H27 “policy period” means the period specified in Item 2 of the Schedule.

H28 “proposal” means any materials submitted to the insurer prior to placement, which shall be retained on file by the insurer and shall be deemed to be physically attached to this policy.

H29 “retention” means the amounts specified in Item 4 of the Schedule.
“retired insured person” means any insured persons who have ceased to act in their insured capacity prior to expiry of the policy period for reasons other than (a) disqualification, on grounds of fitness or propriety, from holding office or from managing a company; (b) a change of control; or (c) the insolvency of the parent company or any subsidiary; and does not subsequently resume their position.

“securities” means any equity or debt instrument issued including any bond, debenture, note, share, stock or other equity or security for debt.

“securities claim” means a claim made against an insured for any actual or alleged act, error, omission, misleading statement or breach of duty arising from or in connection with the purchase or sale of, or offer to purchase or sell securities of the company, whether such purchase, sale or offer involves a transaction with the company or occurs in the open market.

“scheduled outside entity” means any organisation listed in a Scheduled Outside Directorship Endorsement attached to this policy.

“subsidiary” means any entity, other than an investment vehicle, during any time in which the parent company, directly or through one or more subsidiary(ies):

(a) owns more than fifty percent (50%) of the issued and outstanding share capital,
(b) controls more than fifty percent (50%) of the voting rights, or
(c) controls the right to vote for the election or removal of such entity’s directors.

“unrelated claim” means any claim which neither alleges nor arises from any interrelated wrongful acts alleged in a claim previously made during the policy period.

“wrongful act” means any act, error, omission, misstatement, misleading statement, neglect, or breach of duty actually or allegedly committed, attempted or proposed to be committed by any insured person while acting in his or her capacity as an:

(a) insured person of the company or a person serving in a functionally equivalent role for the parent company or any subsidiary; or
(b) outside director.
I. COMPLAINTS

Every effort is made to ensure that a high standard of service is provided. However, if the **insured** is not satisfied with the service it has received, it should contact:

Compliance Officer  
XL Insurance Company plc  
XL House  
70 Gracechurch Street  
London, EC3V 0XL

Telephone: 020 7933 7000

Please quote the policy or claim number and the name of the **parent company**.

Complaints that cannot be resolved by the Compliance Officer may be referred to the Financial Ombudsman Service.

Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London, E14 9SR

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

Telephone 0845 080 1800