

# Information Technology Professional Indemnity Insurance

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## **Policy Wording**

**Any One Claim**

**Defence Costs and Expenses in Addition**

Specimen

# 1 Schedule

The **Insured** has submitted to the **Insurer** the **Proposal** and declarations which it is agreed shall be the basis of, and be incorporated into, this policy and in consideration of the **Premium** paid or to be paid by the **Insured**, the **Insurer** will indemnify the **Insured**, subject to the terms, conditions, exclusions, exceptions and limitations of this policy.

1.1	<b>Policy Number:</b>	
1.2	<b>Insured:</b>	
1.3	<b>Insured's Address:</b>	
1.4	<b>Insured's Business:</b>	
1.5	<b>Period of Insurance:</b>	From: To: both days inclusive
1.6	<b>Limit of Indemnity:</b>	GBP any one <b>Claim</b> (with defence costs and expenses in addition) and: GBP 500,000.00 in the aggregate under Clause 2.1(i) <b>(Computer Virus)</b>
1.7	<b>Deductible:</b>	GBP each and every <b>Claim</b> , except for: Clause 2.2(a) – Loss of <b>Documents or Data</b> GBP 1,000.00 each and every <b>Claim</b>
1.8	<b>Premium:</b>	GBP plus GBP Insurance Premium Tax
	<b>Total:</b>	GBP

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- 1.9 (a) **Jurisdiction:**
  - (b) **Territorial Limits:**
  
  - 1.10 **Retroactive Date:**
  
  - 1.11 **Date of Proposal:**
  
  - 1.12 **Endorsements:**

Signed:  
On behalf of Catlin Insurance Company (UK) Ltd.

Intl:

Date:

**LEGAL HELPLINE:**

Available Monday to Friday from 9.15am to 5.15pm for general English legal advice on matters potentially giving rise to a liability under this policy on the part of the **Insured**.

Telephone: Beachcroft LLP 0117 918 2002

Advice on the Helpline is at no charge for the first 30 minutes only and is not otherwise recoverable from the **Insurer**. Advice given will not include whether or not there might be a notifiable circumstance or **Claim** under the policy, any issues concerning the validity of the policy, or any policy coverage issues. Calls to the Helpline do not and cannot compromise any form of notification to the **Insurer** such as may be required under this policy.

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## 2 Insuring Clauses

### 2.1 Civil Liability

The **Insurer** shall indemnify the **Insured** in respect of any civil liability (including claimant's costs) arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Insured's Business** by reason of:

- (a) any unintentional breach of duty to use reasonable care and skill by any person, firm or company directly appointed by and acting for or on behalf of the **Insured** where the **Insured** has assumed liability for such a breach in a written contract;
- (b) negligence or breach of an express or implied contractual duty to use reasonable care and skill by the **Insured** or by any **Employee**;
- (c) negligent misstatement or negligent misrepresentation by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (d) any unintentional breach of a written contract in the design, production or supply of any **Deliverable** or **IT Services** due to:
  - (i) the **Deliverable** or **IT Services** not conforming in all material respects with any written specification incorporated into the relevant contract and where it is an express term of the contract that the **Deliverable** or **IT Services** must comply with that specification;
  - (ii) the existence of any material defects in the **Deliverable** or **IT Services**;
  - (iii) the failure of the **Deliverable** or **IT Services** to meet any implied statutory term as to quality, fitness or safety;
- (e) libel or slander committed unintentionally by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (f) any dishonest or fraudulent act or omission on the part of any **Employee**;
- (g) any unintentional breach of confidentiality or any right to privacy or **Data Protection Regulations** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (h) any unintentional infringement of intellectual property rights including where the **Insured** has assumed liability for such an infringement in a written contract, committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**, other than rights concerning patent;
- (i) any unintentional transmission of a **Computer Virus** by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;
- (j) any other civil liability.

## 2.2 Loss of Documents or Data

The **Insurer** shall indemnify the **Insured** for:

- (a) reasonable and necessary costs, incurred with the **Insurer's** prior written consent, of repair, replacement or reconstitution of, and
- (b) any settlement, damages, interest and claimant's costs arising from a **Claim** involving

any **Document or Data** which has been unintentionally destroyed, damaged, lost or mislaid during the **Period of Insurance** (and which after diligent search cannot be found) the occurrence of which has been **Notified** during the **Period of Insurance**.

## 2.3 Defence Costs and Expenses

The **Insurer** shall indemnify the **Insured** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under clauses 2.1, 2.2(b) or 2.4; or
- (b) the investigation of any circumstance **Notified** to the **Insurer** under condition 7.2 which may give rise to a **Claim**,

incurred by or on behalf of the **Insured** with the prior written and continuing consent of the **Insurer** (such consent not to be unreasonably withheld) but not including the **Insured's** own costs and expenses or any value attributable to the time spent by the **Insured** or any **Employee** in dealing with a **Claim** or a circumstance.

## 2.4 Payment of Outstanding Fees

The **Insurer** shall indemnify the **Insured** in respect of any **Claim** first **Notified** by the **Insured** during the **Period of Insurance** relating to amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal by a client to pay for work undertaken by the **Insured** where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a **Claim** in excess of the amount owed. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** agrees to pay the amount owed if, at their sole discretion, they consider that a legitimate **Claim** for a greater amount will be avoided. If a **Claim** subsequently arises then the amount paid under this insuring clause will be deducted from the limit of indemnity. If the **Insured** eventually recovers the amount owed then the amount paid by the **Insurer** must be repaid less the **Insured's** reasonable expenses incurred in such recovery.

## 2.5 Witness Attendance

The **Insurer** will pay to or reimburse the **Insured** the cost of attendance at any Court, Arbitration or Adjudication hearing by the **Insured**, including any **Employee** or any other relevant party (but not including expert witnesses) in the event that the legal advisers acting on behalf of the **Insured** require such attendance, provided that the **Insurer** has given its prior written consent to such attendance, as a witness of fact in connection with a **Claim** made against the **Insured** for which cover is afforded under this policy at the following rates for each day or part thereof on which such attendance is required:

- (a) any principal, partner, member or director of the **Insured** GBP 200.00
- (b) any **Employee** GBP 100.00
- (c) any other relevant party up to GBP 200.00

## 2.6 Legal Representation Cost

The **Insurer** will pay on behalf of the **Insured** all reasonable costs and expenses incurred by the **Insured** during the **Period of Insurance** with the prior written consent of the **Insurer** for representation at properly constituted hearings, tribunals or proceedings arising out of any **Claim** first made during the **Period of Insurance** in respect of the conduct of the **Insured's Business** by the **Insured** which may be or may become the subject of indemnity under this policy which are otherwise not indemnified under insuring clause 2.3.

## 3 Definitions

- 3.1 "**Claim**" means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing, or costs under clause 2.2(a).
- 3.2 "**Computer System**" means any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications systems, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers) firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communication system, world-wide web site, **Internet** site, **Intranet** site, **Extranet** site or web address(es).
- 3.3 "**Computer Virus**" means any unauthorised executable code that replicates itself through a **Computer System** or network with the intention of corrupting, manipulating or erasing computer records or damaging computer hardware whether termed a virus, logic bomb, worm, Trojan horse or known by any other name.
- 3.4 "**Data Protection Regulations**" means any privacy laws, statutes and regulations associated with the control and use of personal data, including but not limited to the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and the Privacy and Electronics Communications (EC Directives) Regulations 2003.
- 3.5 "**Deliverable**" means any hardware, firmware, peripherals, software, cabling or electronic equipment.
- 3.6 "**Document or Data**" means all and any records arising from the **Insured's Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the **Insured** is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Insured's Business**.

- 3.7 **"Employee"** means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.
- 3.8 **"Extranet"** means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.9 **"Insured"** means any firm, company or limited liability partnership named in part 1.2 of the **Schedule**, including any of their predecessors in business; its principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 3.10 **"Insured's Business"** means the professional services performed or the advice given by the **Insured** in relation to those activities declared in the **Proposal**, and as described in the **Schedule**.
- 3.11 **"Insurer"** means Catlin Insurance Company (UK) Ltd.
- 3.12 **"Internet"** means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.13 **"Intranet"** means one or more inter-connected networks with restricted access to the **Insured** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.14 **"IT Services"** means any services provided in the conduct of the **Insured's Business** relating to and in connection with any **Deliverable**, including but not limited to data processing, data warehousing, domain name registration, facilities management and outsourcing, systems analysis and design, telecommunications and data communication, website design and web hosting services.
- 3.15 **"Notified"** means that notice is sent in writing by the **Insured** (or its insurance agent) to, and received by, the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance agent).
- 3.16 **"Period of Insurance"** means the period stated in part 1.5 of the **Schedule**.
- 3.17 **"Premium"** means the amount stated in part 1.8 of the **Schedule**.
- 3.18 **"Proposal"** means the written information bearing the date stated in part 1.11 of the **Schedule** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**. This does not include any information contained within or linked to the **Insured's** website unless such information is specifically supplied to the **Insurer** by or on behalf of the **Insured** in written form.
- 3.19 **"Schedule"** means the document entitled **"Schedule"** that relates to and forms part of this policy.

3.20 "**Terrorist Action**" means the actual or threatened:

- (a) use of force or violence against persons or property, or
- (b) commission of an act dangerous to human life or property, or
- (c) commission of an act that interferes with or disrupts an electronic or communications system undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority, or military force, when any of the following applies:
  - (i) the apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy; or
  - (ii) the apparent intent or effect is to cause alarm, fright, fear of danger, or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments; or
  - (iii) the reasonably apparent intent or effect is to further political, ideological, religious, ethnic, racial or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion, ethnic or racial group, or culture.

## 4 Limit of Indemnity

4.1 The limit of indemnity of this policy is the maximum amount the **Insurer** shall be called upon to pay under this policy in respect of:

- (a) any one **Claim** under insuring clauses 2.1 (other than 2.1(i)), 2.2, 2.4, 2.5 and 2.6 with defence costs and expenses under insuring clause 2.3 in addition, and
- (b) the aggregate of all **Claims** during the **Period of Insurance** under insuring clause 2.1(i) INCLUDING any defence costs and expenses under insuring clause 2.3.

The limit of indemnity available under sub-paragraph (b) is not in addition to the limit of indemnity available under sub-paragraph (a).

4.2 The limit of indemnity in respect of any one **Claim** shall be the amount stated in part 1.6 of the **Schedule**. In respect of insuring clause 2.1(i) an aggregate sub-limit of indemnity in the amount stated in part 1.6 of the **Schedule** shall apply including all defence costs and expenses under insuring clause 2.3.

4.3 All payments made by the **Insurer** in respect of clauses 2.1, 2.2, 2.4, 2.5 and 2.6 or any endorsement or otherwise (except for the payment under insuring clause 2.3 of defence costs and expenses for **Claims** under insuring clauses 2.1 (other than 2.1(i)) and 2.2(b) where such costs and expenses are payable in addition to the limit of indemnity) relating to the same **Claim** (as ascertained under clause 4.5 below) shall erode the limit of indemnity in respect of any one **Claim** under this policy.

- 4.4 It is agreed by the **Insured** that if a payment is required or made in settlement of any **Claim** or circumstance which exceeds the limit of indemnity available under this policy, the **Insurer's** liability for defence costs and expenses shall be limited to such proportion as the amount of the limit of indemnity available in respect of such **Claim** or circumstance bears to the amount required or paid in settlement and the **Insured** hereby agrees to make any consequent repayment due to the **Insurer** immediately upon demand, failing which the **Insurer** will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them under this policy.
- 4.5 All **Claims** (including costs sought under insuring clause 2.2(a)) whether made against or sought by one or more **Insured**, wholly or substantially arising from or having any connection with or relation to:
- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause, or
  - (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause, or
  - (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated,

shall be deemed to be one **Claim** or single application for costs under insuring clause 2.2(a) for the purposes of deciding the applicable limit of indemnity and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

## 5 Deductible

- 5.1 A separate deductible being the first part of any **Claim** which is payable by the **Insured** before the **Insurer** shall have any liability to indemnify under this policy shall apply to each and every **Claim**. Payment of the deductible by the **Insured** is a condition precedent to the **Insured** being indemnified by the **Insurer**.
- 5.2 The deductible in respect of any **Claim** shall be in the amount stated in part 1.7 of the **Schedule**, and shall not be applicable to defence costs and expenses.

## 6 Exclusions

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

### 6.1 Known Claim or Circumstance

any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to the **Insured** prior to the **Period of Insurance**;

### 6.2 Death or Bodily Injury

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person, unless caused directly by negligent advice, design, specification, formula or other breach of professional duty by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

### 6.3 Property Damage

any damage to or destruction or loss of any property (except as provided under insuring clause 2.2(a)) including loss of use, unless caused directly by negligent advice, design, specification, formula or other breach of professional duty by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

### 6.4 Trading Losses

any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf of the **Insured**;

### 6.5 Fines and Penalties

any regulatory or disciplinary investigations or proceedings or any fines, penalties or penal, punitive, exemplary, liquidated, restitutionary, non-compensatory or aggravated damages, or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages, except with regard to libel or slander;

### 6.6 Fraud and Dishonesty

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub-contractor of the **Insured**:

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission, or
- (b) in the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives, or
- (c) arising after the discovery of reasonable cause for suspicion of dishonesty or fraud by the dishonest or fraudulent person or persons, or

- (d) in the amount equivalent to,
  - (i) any monies owed by the **Insured** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission, and
  - (ii) any monies held by the **Insured** and belonging to such person,
  - (iii) any monies recovered in accordance with condition 7.5 of this policy;

**6.7 Director and Officer**

any liability of the **Insured** as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee;

**6.8 Nuclear and War**

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion), or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

**6.9 Asbestos**

any actual or alleged liability whatsoever directly or indirectly arising out of, resulting from or in consequence of, or in any way involving or connected with asbestos, or any materials containing asbestos in whatever form or quantity;

**6.10 Toxic Mould**

any actual or alleged liability whatsoever arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or

- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;

#### 6.11 Terrorist Action

any **Terrorist Action** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorist Action**. If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance is not covered by this policy the burden of proving the contrary shall be upon the **Insured**;

#### 6.12 Pollution and Contamination

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

#### 6.13 Radioactive Contamination and Explosive Nuclear Assembly

any ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

#### 6.14 Land and Vehicles

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile);

#### 6.15 Jurisdiction and Territorial Limits

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in part 1.9(a) of the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from the **Insured's Business** undertaken outside the territorial limits shown in part 1.9(b) of the **Schedule**;

#### 6.16 Contractual Liability

- (a) any breach of any written contractual duty or duty of care owed by the **Insured** to any third party and which imposes a greater obligation upon the **Insured** than would otherwise be implied by common law or statute, other than as provided under insuring clause 2.1 (a), (b), (d) and (h);
- (b) from any contract where, before entering into or extending a contract, the **Insured** failed to take reasonable steps to ensure that it could fulfil all of its obligations in accordance with the terms of the contract or any representations made by or on behalf of the **Insured**.

#### 6.17 **Related Companies**

any circumstance concerning, or **Claim** brought by or on behalf of, the **Insured** or any parent or subsidiary company of the **Insured**, or any person having a financial, executive or controlling interest in the **Insured** (unless the financial interest is less than 5%, or the **Claim** made against the **Insured** for an indemnity or contribution is in respect of a **Claim** made by an independent third party), or by or on behalf of any entity controlled or managed by the **Insured** or where the **Insured** has greater than a 5% financial interest, or where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred;

#### 6.18 **Joint Venture**

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

#### 6.19 **Other Insurance**

any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to indemnity under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the limit of indemnity as exceeds the limit of the other policy;

#### 6.20 **Employers Liability**

any breach of any obligation owed by the **Insured** as an employer to any **Employee** or former **Employee** or applicant for employment;

#### 6.21 **Goods and Services**

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

#### 6.22 **Patent**

any infringement of patent;

#### 6.23 **Retroactive Date**

any act error or omission committed, or any loss suffered, or costs incurred, or any liability arising prior to the Retroactive Date specified in part 1.10 of the **Schedule**;

#### 6.24 **Insolvency**

the insolvency or bankruptcy of the **Insured**;

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6.25 **Market Fluctuation**

any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority;

6.26 **Third Party Inherent Defect or Failure**

any inherent defect in any **Deliverable** supplied by a third party or the failure of a third party to supply any **Deliverable** or provide any service. However, this exclusion shall not apply if, in the **Insurer's** sole opinion, the **Insured** could make legal recovery under a written contract with such third party;

6.27 **Recall Costs**

any costs and expenses incurred in the refund, recall or replacement of any **Deliverable** or service provided. However, this exclusion shall not apply if, in the **Insurer's** sole opinion, the **Insured** could make legal recovery under a written contract with a third party;

6.28 **Restricted Recovery Rights**

that part of any **Claim** where the **Insured's** right of recovery against a third party has been restricted by the terms of any written contract entered into by the **Insured**;

6.29 **Computer Virus**

any **Computer Virus** created or modified by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

6.30 **Internet Service, Telecommunications or Other Utility Provider**

any failure or loss of service provided by an internet service provider, telecommunications provider or other utility provider except where these services are provided by the **Insured** as part of the **Insured's Business**;

6.31 **Deliberate Acts**

any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**;

6.32 **Taxation, Competition, Restraint of Trade or Anti-trust**

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

## 7 Conditions

### 7.1 Contracts (Rights of Third Parties) Act

Under the contract of insurance comprised by this policy there is no intention to confer any rights on any party except the **Insurer** and those named or defined as **Insureds** herein, and no third party shall acquire any rights under or in relation to this policy nor be entitled to the benefit of any of its terms by operation of the Contracts (Rights of Third Parties) Act 1999 or any re-enactment of or amendment to it.

### 7.2 Notification

As a condition precedent to the right to be indemnified under this policy the **Insurer** must be **Notified** in writing to the Notification Address set out below within twenty-eight days, provided always that such notification is received by the **Insurer** during the **Period of Insurance**:

- (a) of any **Claim**;
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) of any circumstance of which the **Insured** shall become aware which may reasonably be expected to give rise to a **Claim**;
- (d) of any circumstance of which the **Insured** shall become aware which may reasonably be expected to give rise to an entitlement to be indemnified under this policy;
- (e) of an occurrence that may require representation at a properly constituted hearing, tribunal or proceeding, which may give rise to a **Claim**.

In the event that the **Insurer** is **Notified** during the **Period of Insurance** of any circumstance which in the **Insurer's** reasonable opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so **Notified** shall be deemed to have been made during the **Period of Insurance**.

Notification Address:

Angel Risk Management Limited  
3<sup>rd</sup> Floor  
1 Legg Street  
Chelmsford  
Essex  
CM1 1JS

Tel No: 01245 343630

Email: [claims@angelriskmanagement.com](mailto:claims@angelriskmanagement.com)

### 7.3 Duty to Cooperate

As a condition precedent to the right to be indemnified under this policy the **Insured** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy and provide such co-operation and assistance as the **Insurer** and its representatives, legal advisers or agents may reasonably require. It is a condition precedent to the right to be indemnified under this policy that the **Insured** and any **Employee** (or any person, firm or company acting for or on behalf of the **Insured**) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

### 7.4 No Admission of Liability

As a condition precedent to the right to be indemnified under this policy the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the **Insurer**; admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where the **Insured** has requested to be indemnified under this policy.

### 7.5 Dishonest or Fraudulent Claim Recovery

Where a **Claim** or circumstance against the **Insured** involves the dishonest or fraudulent act or omission of any **Employee** of the **Insured**:

- (a) the **Insured** shall at the request and expense of the **Insurer** take all reasonable steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall not be repaid;
- (c) nothing in this policy shall preclude the **Insurer** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (d) no payment shall be made by the **Insurer** under this policy until after the final ascertainment of the amount of any recovery from the dishonest or fraudulent person or persons or their estates or legal representatives.

### 7.6 Discharge of Policy Liability

The **Insurer** may in its absolute discretion, at any time, after deduction of such sums as they may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which the **Insured** is liable in respect of any **Claim** or circumstance, tender to the **Insured**

- (a) the remaining amount of the limit of indemnity available under this policy, or
- (b) such lesser amount for which the **Insurer** believes the **Claim** or circumstance can be settled (to include claimants' costs and interest)

and thereafter the **Insurer** will cease to have any further liability under this policy.

## 7.7 Conduct of Claim

The **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy. The **Insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insurer** and the **Insured**) provided always that the **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

## 7.8 Subrogation

Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which indemnity is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** 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 the **Insurer** would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the **Insurer**, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses.

## 7.9 Dishonest and Fraudulent Policy Claims

If the **Insured** shall make any **Claim** or report any circumstance knowing it to be in whole or in part false or fraudulent, then the policy shall immediately become void from inception and all policy rights shall be forfeit and any payments already made under the policy shall be immediately repayable. Alternatively, and at its sole option, the **Insurer** may choose to reinstate the policy but refuse indemnity for the false or fraudulent **Claim** or circumstance.

## 7.10 Avoidance by Insurer

If the **Insurer** is entitled, for any reason, to avoid this policy from inception, the **Insurer** may at its absolute discretion elect instead to give notice to the **Insured** that it regards this policy as being in full force and effect, except that no indemnity will be given under this policy that arises from or is related to the grounds that entitled the **Insurer** to avoid this policy.

## 7.11 Cancellation

This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver, or administrator over any of the **Insured's** assets;

- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of composition with its creditors by the **Insured**;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled or any territory within the territorial limits. For the purpose of this condition alone the **Insured** shall mean only the firm or company named in part 1.2 of the **Schedule**.

#### 7.12 **Data Protection Act 1998**

It is agreed by the **Insured** on behalf of itself, its partners, principals, directors, members and **Employees** that any information provided to the **Insurer** regarding the **Insured** will be processed by the **Insurer**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

#### 7.13 **Premium Payment**

7.13.1 The **Insured** undertakes that **Premium** will be paid in full to the **Insurer** within sixty days of inception of this policy (or, in respect of instalment **Premiums**, when due).

7.13.2 If the **Premium** has not been so paid to the **Insurer** by the sixtieth day from the inception of this policy (and, in respect of instalment **Premiums**, by the date they are due) the **Insurer** shall have the right to cancel this policy by notifying the **Insured** via the broker in writing. In the event of cancellation, **Premium** is due to the **Insurer** on a pro rata basis for the period that the **Insurer** is on risk but the full policy **Premium** shall be payable to the **Insurer** in the event of a notification prior to the date of termination which gives rise to a **Claim** under this policy, and the **Premium** shall be added to and form part of the deductible amount in the event of its non-payment.

7.13.3 It is agreed that the **Insurer** shall give not less than fifteen days prior notice of cancellation to the **Insured** via the broker. If **Premium** due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked, if not, this policy shall automatically terminate at the end of the notice period.

7.13.4 Where the **Premium** is to be paid through a London Market Bureau, payment to the **Insurer** will be deemed to occur on the day of delivery of a **Premium** advice note to the Bureau.

#### 7.14 **Rectification of Defects**

As a condition precedent to the right to be indemnified under this policy the **Insured**, at their own expense, will take reasonable steps to remedy and/or rectify any defect or failure in any **Deliverable** or service supplied by the **Insured** to a client arising prior to the clients acceptance of the **Deliverable** or within 180 days of acceptance or any longer period specified in any contract between the **Insured** and the client, including a maintenance contract.

#### 7.15 Availability of Source Code Material

As a condition precedent to the right to be indemnified under this policy the **Insured** will maintain a current and accurate copy of the source code material being the source code and object code owned by the **Insured** or under its absolute control and comprised within the **Deliverable** or any product or service provided by the **Insured** in the course of the **Insured's Business**, together with encryption keys, locks or passwords, or any other documentation relating to such software, which is or may be required for the understanding, maintaining, modifying or correcting of the software. In the event of a **Claim** against the **Insured** the **Insured** will, immediately on demand by the **Insurer** provide to them such copy of the source code material for the exclusive purpose of mitigating and/or determining any loss or liability.

#### 7.16 Protection of Computer Systems

As a condition precedent to the right to be indemnified under this policy the **Insured** shall take reasonable measures to maintain and upgrade software which protects against any unauthorised use or access to the **Insured's Computer System** or internet web site, and to take regular back-up copies of any data, file or programme.

## 8 Interpretation

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

## 9 Governing Law and Disputes

- 9.1 Any dispute or disagreement between the **Insured** and the **Insurer** arising out of or in connection with this policy shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by the **Insured** and the **Insurer** or failing agreement to be appointed by the President of The Institute of Chartered Accountants in England and Wales, or Scotland, or Ireland as applicable) whose decision shall be final and binding on both parties.
- 9.2 This policy shall be governed by and construed in accordance with the law of England and Wales, or Scotland, or Ireland as applicable.
- 9.3 The Courts of England and Wales, or Scotland, or Ireland, as applicable, shall have exclusive jurisdiction to hear and determine any suits, actions or proceedings and to settle any disputes that may arise out of or in connection with this policy.

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## 10 Policyholder Complaints

Catlin Insurance Company (UK) Ltd. is dedicated to providing a high quality service and wants to ensure that it maintains this at all times. If the **Insured** feels that Catlin has not offered a first class service or if the **Insured** has any questions or concerns about the policy or the handling of a **Claim** the **Insured** should, in the first instance, contact its broker through whom this insurance was placed.

If the **Insured** is unable to resolve the situation and wishes to make a complaint, the **Insured** can do so at any time by referring the matter to:

Compliance Officer  
Catlin Insurance Company (UK) Ltd.  
20 Gracechurch Street  
London  
EC3V 0BG

Tel No: 020 7743 8487  
E-mail: [xlcatlinukcomplaints@xlcatlin.com](mailto:xlcatlinukcomplaints@xlcatlin.com)

Complaints that cannot be resolved by the Compliance Officer may in certain circumstances be referred to the Financial Ombudsman Service at:

South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

Tel No: 0845 080 1800  
E-mail: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

Further details will be provided on request and at the appropriate stage of the complaints process.