

INTEGRATED CRIME CYBER INSURANCE

For Marine Transport Industry

Policy Schedule

Item 1. Name and address of Insured:

List all Subsidiaries to be insured hereon:

List all Maritime Agencies contracted to provide service to the Insured and engaged in activities per Proposal Form:

Item 2. Policy Period: Inception date: from: (insert date)
Expiration date: to: (insert date)

Item 3. Limit of Liability: **USD** or currency equivalent and in the aggregate each **policy period** in respect of claims that qualify for recovery hereon

Subject sub-limits in respect of coverages A6 and D1 at 10% of Limit of Liability hereon

Policy Retentions: This insurance shall be subject to a combined single retention of **USD** any one **loss, crime loss, network compromise, data breach, extortion demand, act of identity fraud, or regulatory investigation**

Business Interruption : Max period of restoration (days):
Retention (in addition to policy retention above):

Item 4. Premium: **USD**

Developed in
collaboration with



AXA XL, a division of
AXA

SHORELINE

Item 5. First party events must be notified to
**XL Catlin's Cyber Response Hotline provided by XL Catlin's Cyber Services Provider,
Crawfords:**

Telephone: 0800 2798073

Claim notices required to be given to the Insurer in writing must be
addressed to:

Michael Slattery Head of Claims Financial Lines
Michael.slattery@xlcatlin.com
XL Catlin,
20 Gracechurch Street, London EC3V 0BG,
United Kingdom

Item 6. **Optional Discovery Period: []**

Premium for Optional Discovery Period: []

Item 7. **Territorial Limits:**
Worldwide

Item 8. **Insured's Claim Jurisdiction Limits:**
Worldwide

Item 9. **Retroactive date:** (Insert date)

Insuring Clauses

The Policy provides cover under the insuring clauses set out at Sections A – D below only if the relevant insuring clause has been agreed in the policy schedule. All sums payable shall be subject to the **limit of liability** for the policy specified in the Schedule. In addition, all sums payable shall be after recoveries, if applicable, of any sums payable for the particular peril / subject matter under the Protection and Indemnity entries or equivalent insurance covering the **insured**, and in addition, excess of any retention specified accordance with Item 3 of the Schedule

A Owned Asset Protection and First Party Costs

The Insurer shall indemnify the **insured** for **crime loss discovered** during the policy period arising from a loss of **assets** directly attributable to:

- A1 **Theft of Assets**
an act of **theft**.

- A2 **Social Engineering**
an act of **social engineering**

The **insurer** shall pay on behalf of or reimburse the **insured** in respect of the following costs, each of which is to be reasonably and necessarily incurred with the prior consent of the **insurer and/or** with the **service provider** named at Item 5 in the Schedule:

- A3 **Loss of or damage to Electronic Data**
replacing, updating or restoring the **insured's electronic data**, from back-ups, which has been destroyed, lost, altered, corrupted, distorted, rendered no longer machine-readable, or subject to theft or misuse, as a result of a **network compromise** or **data breach** first **discovered** during the **policy period**, but only up to a level that existed prior to such **network compromise**.

- A4 **Privacy Notification and Crisis Management Costs**

In respect of a **network compromise** or **data breach** first **discovered** during the **policy period**:

- (a) legal fees in order to determine the actions necessary to comply with legislation related to the **data breach** or **network compromise**;
- (b) the cost of notifying individuals of the **data breach** whether or not they are required to be notified pursuant to legislation;
- (c) the costs of operating a call centre to manage inquiries from individuals potentially affected by the **data breach** or **network compromise**;
- (d) the costs of providing credit or identity monitoring and identity protection for those individuals whose **personal data** was or may have been affected by the **data breach** or **network compromise**;
- (e) the fees of a public relations or crisis communication firm solely in order to minimise harm to the **insured's** reputation Provided that such costs / fees are incurred with the **service provider**.

- A5 **Computer forensic investigation costs**

The costs of performing computer forensics to determine the existence, cause, and scope of a **network compromise** or **data breach**, first **discovered** during the **policy period**;

A6 **Corporate Identity Fraud**

Costs incurred

- a) in correcting or reinstating public records; or
- b) to apply for the dismissal of civil or criminal court proceedings brought against the **insured**; following an act of **identity fraud** sustained and first **discovered** during the **policy period**

B Business Interruption, Regulatory Investigations and Extortion Demands Due

The **insurer** shall pay on behalf of or reimburse the **insured** in respect of the following losses or reasonable and necessary costs incurred with the prior consent of the **insurer**, as part of the **limit of liability**:

B1 **Business Interruption**

- (a) **loss of profit**; and
- (b) **operational expenses**;

during the **period of restoration** directly caused by a **network compromise** or **data breach**, **discovered** during the **policy period** which has caused a partial or total network interruption or which necessitates a partial or total shutdown in order to prevent further loss.

B2 **Regulatory Investigations**

Defence costs and **regulatory fines** (where insurable) arising from a **regulatory investigation**, but only where the **insured** is first made aware during the **policy period** of the intention to hold such investigation.

B3 **Extortion Demands**

If payment is legally permissible, the amount demanded as part of an **extortion demand** first made against the **insured** during the **policy period** by a third party which has committed or plausibly threatens to commit a **denial of service**, **network compromise** or a **data breach** provided that prior to delivery of funds, the **insured** receiving such a threat:

- (a) has reported the extortionist's demand to the police or local law enforcement authorities; and
- (b) had a reasonable belief that such threat was credible, could cause loss to the **insured** in excess of the amount demanded, and was technologically feasible at the time made.

C Third Party Clauses

C1 **Third Party Liability**

The **insurer** will pay on behalf of the **insured** all **losses** that the **insured** becomes legally liable to pay as a result of a **claim** which alleges harm first made against the **insured** during the **policy period**, in respect of the following:

- (a) **privacy and security wrongful act**;
- (b) breach of confidentiality;
- (c) committing or failing to prevent a **network compromise** or **data breach**; or
- (d) loss, theft, destruction, or misuse of tangible documents or **electronic data** in the **insured's** care, custody and control;

which takes place during the policy period and which arises in the provision of the transport of goods or passengers by the insured.

D Mitigation Costs and Emergency Costs

D1 Loss Mitigation

The **insurer** will reimburse the **insured** for the costs of measures taken by the **insured** incurred with the agreement of the **service provider** or for the costs of an insurer approved Public Relations (PR) consultant, for the sole purpose of avoiding or mitigating a loss which the **insured** establishes to the **insurer's** satisfaction, might otherwise have reasonably be expected to give rise to a **loss** covered under this policy without such expenditure.

D2 Emergency costs

Where it has not been practicable to seek the **insurer's** prior written consent to incur expenses referred to at insuring clauses A4, B3, or C1 above, the **insurer** will reimburse the **insured** for such expenses in respect of reasonable and necessary emergency payments, but only up to the **limit of liability** for this insuring clause referred to in Item 3 of the schedule.

E Exclusions Applicable to all Insuring Clauses

The insurer will not be liable to make any payment for any costs, loss, loss of profit, or fee or expense:

- E1 **Acquisitions and Sales**
arising out of any act, error, omission, **network compromise** or **data breach** committed:
- (a) by any entity newly formed or acquired by any **insured** unless it becomes a newly acquired subsidiary in accordance with clause H4; or
 - (b) by any entity before it became a newly acquired subsidiary, unless the **insurer** agrees by endorsement to the policy to provide such coverage; or
 - (c) by any entity that was a **subsidiary** or newly acquired subsidiary after it ceases to be a **subsidiary** or newly acquired subsidiary.
- E2 **Bodily Injury**
arising out of actual or alleged **bodily injury**, except that this exclusion will not apply to any mental anguish or emotional distress caused as a result of a **data breach**.
- E3 **Business Practice**
arising out of any actual or alleged anti-trust violation, price fixing, restraint of trade, unfair competition, violation of consumer protection laws, or false, deceptive or unfair trade practices. This exclusion, however, does not apply to **claims** based on **data breach** under consumer privacy protection laws.
- E4 **Contractual Liability**
arising out of liability assumed or accepted by an **insured** under any contract or agreement, including any guarantee or warranties, except to the extent the **insured** would have been liable in the absence of such contract or agreement.
- E5 **Damage to Property by a network compromise**
arising out of actual or alleged physical damage or destruction by a **network compromise** of any tangible property, including any resulting loss of use and/or consequential loss of income.
- E6 **Director, Officer and Employee Claims**
arising out of a **claim** made by or on behalf of or instigated by any director, officer, or **employee** of an **insured** except in respect of a **data breach**.
- E7 **Dishonest, Intentional, Illegal or Reckless Acts**
arising out of any dishonest, intentional, fraudulent, malicious, reckless, or criminal act or omission by any party with the consent or prior knowledge of any officer, director or partner, or spouse of any officer, director or partner of the **insured**.
- E8 **Electrical Failure**
arising out of, or in any way involving any electrical failure including electrical power interruption, outage, surge, brownout or blackout, except this exclusion does not apply when the electrical failure occurs whilst under the under the direct operational control of an insured or its employees.
- E9 **Electromagnetic Discharge**
arising out of, or in any way involving the existence, emission or discharge of any electromagnetic field, radiation or magnetism that allegedly or actually affects the health, safety or condition of any person or environment, or that affects the value, marketability, condition or use of any property.

- E10 **Employment Practices, Directors and Officers**
arising out of employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees, discrimination, humiliation, harassment, or misconduct based on an individual's race, creed, colour, age, gender, national origin, religion, disability, marital status or sexual preference or other classification.
- E11 **Financial Guarantees**
arising out of any promise, representation, or guarantee for or relating to return on investment, cost savings, or profits.
- E12 **Force Majeure**
arising out of or caused by force majeure and any failure due to any cause whatsoever of any system and/or provision of infrastructure which includes telecommunications, internet service, satellite or network over which the **insured** has no direct control, save that this exclusion shall not apply to any failure or outage whilst under the direct operational control of the **insured** or its employees.
- E13 **Illegal Software**
arising out of, based upon, or attributable to the **company** having knowingly used illegal or unlicensed software, including software which has been modified without approval from the software provider.
- E14 **Insured's claim jurisdiction and territorial limits**
arising out of any:
legal proceedings brought in a court of law outside the jurisdiction in the schedule or brought in a court of law within such jurisdiction to enforce a judgment or order made in any court of law outside such jurisdiction.
- E15 **Insured v insured**
arising out of a **claim** made by or on behalf of an **insured** against any other **insured**.
- E16 **Mergers**
arising out of any act, error, omission, or **data breach** committed or any **extortion demand**, or **network compromise** that occurs or is **discovered**:
(a) after the **insured**, or all or substantially all of its assets, are acquired by another entity;
(b) after the **insured** is merged or consolidated with or into another entity if the **insured** is not the surviving entity; or
(c) after any person or entity or group of persons and entities obtains the right to vote, select or appoint more than fifty percent (50%) of the directors of the **insured**.
- E17 **Natural Catastrophe**
arising out of fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or any other natural weather or seismic event.
- E18 **Ownership**
arising out of a claim by any person or entity if, on or after the date or time of the act, error or omission giving rise to such **claim**:
(a) any **insured** controlled, owned, operated or managed such entity; or
(b) any **insured** was an owner, partner, member, director, officer or **employee** of such person or entity.

Control of or ownership in a business enterprise is presumed if any **insured** owned or held ten percent (10%) or more of the equity and/or debt instruments of such enterprise.

E19 **Other Professional Advice**

arising out of any professional advice.

E20 **Patents and Trade Secrets**

arising out of any patent rights, trademarks, copyrights, misuse of patents or trade secrets.

E21 **Pollution**

arising out of, whether suddenly or over a period of time, any:

- (a) actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants; or
- (b) injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or clean up of any pollutants.

E22 **Prior Acts**

arising out of any fact or circumstance known to the **insured** or ought reasonably to have been known by the **insured**, whether or not such fact or circumstance was notified under another insurance policy, or which arises from, or is related to the same originating cause as any notified fact or circumstance;

E23 **Regulatory Action**

arising out of any governmental, quasi-governmental or regulatory action or investigation, except with respect to a **regulatory investigation**.

E24 **Retroactive Date**

arising out of any act, error, omission, or **first party event** that occurs before the **retroactive date** specified in the Schedule.

E25 **Securities**

arising from any loss of, or dealing or trading in securities, commodities, futures, options, foreign or Federal funds, currencies, foreign exchange and the like.

E26 **Shareholder Action**

arising out of a **claim** made by or on behalf of or instigated by any shareholder of an **insured**, acting in their capacity as such, except when made as a customer or client of that **insured**.

E27 **Strike, War, Insurrection**

arising out of strikes or similar labour action, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority or any action taken to hinder or defend against these actions.

E28 **Terrorism**

arising out of an act, including the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, or other ideological reasons or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Provided that this exclusion shall not apply to cyber terrorism.

E29 **Trading**

- (a) arising directly or indirectly from loss due to the authorised or unauthorised trading of money, funds or anything else or their derivatives;
- (b) arising out of the fall in the value of the **insured's** shares.

E30 **Unlawful activity**

arising out of any act or omission of an **insured** intended to secure a profit or advantage to which that **insured** is not legally entitled.

E31 **Unsolicited Communications and Data Collection**

arising out of:

- (a) unsolicited faxes, emails or other communications sent by or on behalf of an **insured** to any third party;
- (b) actions brought under the Telephone Consumer Protection Act, the CAN-SPAM Act of 2003 or similar legislation in any other jurisdiction.

This exclusion shall not apply to **loss** arising from **claims** directly resulting from a **network compromise** which is covered under insuring clause D1.

E32 **Wear and Tear**

arising out of wear and tear or gradual deterioration or failure of any electronic equipment in normal use.

F Limits of Liability, Retention and Aggregation

F1 Limit of Liability

- (a) The **limit of liability** is the total aggregate sum payable by the **insurer** in respect of all **insureds** and all insuring clauses and the **insurer** will have no liability in excess of the **limit of liability**.
- (b) Any sum paid by the **insurer** under this policy will erode the **limit of liability**.
- (c) The **insurer** may at any time pay to the **insured**, the amount of the **limit of liability** (after deduction of sums already paid) and upon such payment being made the **insurer** shall have no further liability or obligation under this policy.

F2 Retention and Underlying Insurance

- (a) The **insurer** will be liable only for those claims that cannot be recovered from any primary or underlying insurances arranged by the **insured**, including but not limited to its Protection and Indemnity Club entries or equivalent insurances.
- (b) This policy will always remain subject to the applicable **retention** in the Schedule. The **retention** will be borne by the **insured** and will remain uninsured.
- (c) The relevant **retention** will not form part of the **limit of liability**.

F3 Aggregation

Losses, or fees or expenses arising out of, based upon or attributable to the same originating cause or event will be considered to be a single cause or event and only the largest applicable **retention** will be applied to the aggregate amount payable in respect of such single cause or event.

G Defence and Allocation

G1 Conduct of Defence

- (a) Each **insured** will have the duty to defend and contest any **claim** made against it. The **insurer** will be entitled to be consulted in the conduct of the defence of such matters and, at their sole option, to take over control of the defence, including any settlement negotiations, contributions and/or indemnification proceedings.
- (b) Where the **insurer** takes over conduct of the defence as provided under clause G1(a), the **insurer** shall have full discretion in the handling thereof (notwithstanding) that a dispute may have arisen between the **insured** and the **insurer**) provided that the insured shall not be required to contest any legal proceedings unless a Queen's Counsel of the English Bar (to be mutually agreed upon by the **insured** and the **insurer** or failing agreement to be appointed by the Chairman for the time being of the Commercial Bar Association (COMBAR)) shall advise that such proceeding can be contested with a reasonable prospect of success. The cost of the Queen's Counsel's opinion under this clause G1(b) will form part of the **defence costs**.
- (c) There will be no cover under this policy if any **insured**:
 - (i) compromises or settles any **claim** or matter which may reasonably give rise to a **claim**;
 - (ii) incurs, or agrees to pay or incur any cost, fee, expense or pay an **extortion demand**;

without the **insurer's** prior written consent, save as is related to cover under insuring clause D2.

G2 Defence Costs

- (a) The **insurer** will not be obliged to pay **defence costs** unless the **insurer** has provided prior written consent to the **defence costs** being incurred.
- (b) The **insured** will reimburse the **insurer** for any payments which are ultimately determined not to be covered under this policy.

G3 Allocation

- (a) Where the handling or defence of a **claim** involves both matters or parties covered and matters or parties not covered by this policy, the costs of defending the **claim** will be allocated between the insurer and the insured in the same proportion that the covered matters or parties bear to the uninsured elements of the claim.
- (b) Where there is no express allocation of the defence costs or of any damages, judgment, awards and/or settlement between matters or parties covered and matters or parties not covered by this policy, a fair and proper allocation will be made between the **insured** and the **insurer**, taking into account the relative legal and financial exposures attributable to the covered matters or parties and the matters or parties not covered by this policy.

H General Conditions

H1 Basis of valuation and proof of loss

- (a) In determining the amount payable under this policy for any **loss, crime loss**, fees or expenses, deductions shall be made in respect of any recoveries from any source whatsoever, whenever received, in connection with any matter from which an indemnifiable **loss, crime loss**, fee or expense has arisen, and the **retention** shall apply to the net figure after making such recoveries.
- (b) In no event shall the insurer be liable for more than the actual cash value of **assets** at the time the **crime loss** was **discovered**, or the actual cost of repairing or replacing the **assets** with property or material of like quality or value, whichever is less.
- (c) Profit and loss computations or comparison, or a comparison of inventory records with an actual physical count shall not be acceptable supporting documentation to demonstrate the value of **crime loss**.

H2 Discovery and notification of loss

- (a) The **insured** must give the **insurer** written notice of any;
 - (i) **claim** first made against the **insured**, during the **policy period** or applicable **discovery period**; or
 - (ii) **first party event discovered**, during the **policy period** or applicable **discovery period** and, in any event, within ninety (90) days after such **discovery**.
- (b) 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**, or **first party event**. All **claim** notices must be sent by certified mail or the equivalent to the address set out in item 5 of the Schedule. All **first party events** must be referred to the **insurer's** Cyber Service Provider referred to in the Schedule.
- (c) There shall be no indemnity in respect of any **first party event** which relates to a **network compromise, data breach**, or **extortion demand** which commenced, occurred or took place after the expiry of the **policy period**.

H3 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 ninety (90) days; and
 - (ii) to purchase an optional discovery period for a longer period as specified in item 6 of the Schedule, provided that written notice is provided to the insurer by the insured within thirty (30) days after the end of the policy period and any additional premium specified by the insurer is paid within forty-five (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 company.
- (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 **loss** or **first party event** during the optional **discovery period** shall be part of and not in addition to the **limit of liability**.
- (d) No **discovery period** shall apply in the event that a **change in control** takes place in respect of the **insured**.

H4 **Acquisitions**

The term **subsidiary** will include any entity of which the **insured**, either directly or indirectly through one or more of its **subsidiaries**, acquires, establishes, merges or consolidates with during the **policy period** provided that:

- (a) at the time of obtaining that control or holding, the acquired entity has total turnover less than 25% of the **insured's** turnover;
- (b) cover in respect of such acquired entity shall only apply for acts committed after the date of creation, acquisition, merger or consolidation of or with such entities.

H5 **Change in Control**

- (a) If, during the **policy period**, a **change of control** occurs with respect to an **insured**, the **insurer** shall not be liable for or make any payment or provide any services in connection with any **loss**, fee or expense incurred by that **insured** or any **subsidiary** arising out of, based upon or attributable to any act or omission occurring after the **change of control**.
- (b) The **insured** shall, as soon as practicable, give the **insurer** written notice of any **change of control** which takes place in respect of the **insured**.
- (c) Cover for any **loss**, fees or expenses suffered or incurred by any **subsidiary** shall only apply in respect of **loss**, fees or expenses arising out of, based upon or attributable to any act or omission occurring while that entity is a **subsidiary**.

H6 **Cooperation and Mitigation**

Each insured will:

- (a) take all reasonable steps to prevent or minimise any **loss**, **loss of profit**, fee or expense;
- (b) render all reasonable assistance to and cooperate with the **insurer** in the defence of any **claim** and the assertion of indemnification and contribution rights.

Unless expressly provided for in this policy or otherwise agreed in writing by the **insurer**, such steps will be at the **insured's** own cost and will not include the admission or assumption of any liability, or settlement of any **claim** without the prior written consent of the **insurer**. It is agreed however that self-reporting to any regulator, government, government body, governmental or administrative agency, any self-regulatory body, or official trade body shall not, in itself, be deemed to be an admission of liability.

H7 **Emergency Response Costs**

The **insurer** will have no liability to indemnify the **insured** under insuring clause D2 unless the insured:

- (a) gives written notice to the **insurer** within 7 days of agreeing to make such payments, of both:
 - (i) the fact, circumstance or event that might reasonably have been anticipated to give rise to a **claim** under this policy; and
 - (ii) the nature of the amounts paid or incurred by the **insured**; and
- (b) establishes to the **insurer's** reasonable satisfaction that:
 - (i) such anticipated **claim** would have been covered under this policy; and
 - (ii) because of an emergency situation faced by the **insured**, it was reasonable and necessary for the **insured** to make the payment or incur the costs, fees or expenses prior to notification; and
 - (iii) the amount paid or incurred by the **insured** was reasonable.

H8

Subrogation and Recoveries

- (a) If the **insurer** becomes liable for any payment under this policy, the **insurer** will be subrogated to all rights and remedies available to any **insured** in connection with that liability and will be entitled to bring proceedings in the name of such **insured**.
- (b) Each **insured** will take all steps necessary or required by the **insurer** whether before or after payment by the **insurer** to preserve the rights and remedies which the **insured** may have to recover its loss, costs, fees or expenses from any third party.
- (c) Both before and after any payment under this policy, each **insured** will provide to the **insurer** any assistance in their power as the insurer may require securing such rights and remedies as set out in clause H8(a) and (b) above and will take all steps required by the **insurer**.
- (d) The **insurer** will be entitled to take control of all steps which are taken to recover the **loss, loss of profit**, fees or expenses from any third party whether or not any portion of the **loss, loss of profit**, fees or expenses the **insured** has suffered is uninsured and whether or not the **insurer** has provided (or will provide) only a partial indemnity under this policy. The decision whether or not to take any step to pursue a recovery in connection with the **loss, loss of profit**, fees or expenses will rest with the **insurer** notwithstanding the existence of any uninsured loss.
- (e) The costs of such proceedings will be borne by the **insured** and the **insurer** in the same proportion that the covered **loss, loss of profit**, fees or expenses bears to any uninsured element of the **claim** against the third party, but only to the extent that such costs are incurred after the **insurer** has accepted liability.
- (f) Any amounts recovered from third parties will be applied in the following order:
 - (i) to recompense the **insured** and the **insurer** for the costs incurred in bringing proceedings against the third party (such payments will be allocated between the **insured** and the **insurer** in the same proportions as they have borne those costs); and
 - (ii) then to the **insured** for the amount, if any, of the **loss, loss of profit**, fees or expenses which exceeds the **limit of liability**; and
 - (iii) then to the **insurer** up to the amount of the **loss, loss of profit**, fees or expenses paid by the **insurer**; and
 - (iv) then to the **insured** in respect of any uninsured element of the **claim** against the third party (including the **retention**)
- (g) Interest on amounts recovered from third parties will be allocated proportionally to the amounts paid in clause H8(f) above.
- (h) The **insurer** agrees not to exercise its rights of recovery against any **employee** unless the **claim** is brought about or contributed to by dishonest, fraudulent, intentional or criminal acts, errors or omissions of the **employee**.

H9

Other Insurance

If a **loss, loss of profit**, fee or expense covered by this policy is also covered by any other insurance or indemnity or guarantee collectible by **the insured**, this policy will only pay in excess of the amount of such other insurance or indemnity or guarantee. As excess insurance this policy will not apply or contribute to the payment of any **loss, loss of profit**, fee or expense until the amounts of such other insurance or indemnity have been exhausted and in particular, any Protection and Indemnity entries or equivalent insurance applicable.

H10 **Confidentiality**

- (a) The **insurer** will treat as confidential all information provided to it by the **insured** in connection with this policy or any **loss** or potential **loss**, under this policy and will not, without the prior consent of the **insured**, disclose any such information to any third party. However, the **insurer** will be entitled to disclose any confidential information to:
- (i) any director, officer, employee, agent, auditor, reinsurer or adviser to the **insurer** and/or its group companies or any loss adjuster appointed by the **insurer** in dealing with the insurance or the **insured**; or
 - (ii) any person in order to comply with any legal or regulatory requirement or rule of any stock exchange; 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**; or
 - (iii) comes into the **insurer's** possession other than by being provided by the **insured**.

Except as set out above, the **insurer** will cooperate with the **insured** in preserving the confidentiality of any of its **confidential information**.

H11 **Policy Interpretation**

- (a) Any interpretation of this policy relating to its construction, validity or operation will be determined in accordance with the laws of England and Wales.
- (b) This policy, the 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 such legislation and equivalent legislation in the relevant jurisdiction; and references to positions, offices or titles will include their equivalents in any jurisdiction; and
 - (iii) references to positions, officers or titles shall include their equivalents in any jurisdiction.

H12 **Mediation, Arbitration and Law**

- (a) In the event of any dispute arising between the **insurer** and any **insured** regarding any aspect of this policy, including its validity, if the parties so agree, they may refer the matter for resolution through mediation before a mutually agreed mediator.
- (b) If the parties do not agree to mediate, or in the event that the dispute is not resolved through mediation, the dispute will 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 will consist of three arbitrators, one to be appointed by the **insured** party 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 will be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The arbitration tribunal will be constituted upon the appointment of the third arbitrator.

- (ii) the arbitrators will be persons (including those who have retired) with not less than ten years' experience of insurance within the industry or as lawyers serving the industry.
 - (iii) where a party fails to appoint an arbitrator within 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 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 will be binding on both parties as if he had been so appointed by agreement
 - (iv) the arbitration tribunal may at its sole discretion make such orders and directions as it considers necessary for the final determination of the matters in dispute. The arbitration tribunal will have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions. The parties will retain their statutory rights to appeal any award made by the arbitration tribunal. The seat of arbitration will be London, England and the law governing the arbitration will be that of England & Wales.
- (c) In the event that clause H13(b) is unenforceable for any reason, the jurisdiction of the High Court of England and Wales will apply to any dispute between the **insurer** and any **insured** under this policy.

H13 **Single Policy**

This policy is a single contract of insurance and even if more than one **insured** is covered, this policy is a single contract of insurance for the benefit of the **insured** as a joint **insured** and accordingly:

- (a) the **insured** will act for itself and for its subsidiaries for all purposes under this policy; and
- (b) the **insured** will act for itself and for all its subsidiaries for acceptance of any endorsements issued to form a part of this policy; and
- (c) payment of any **loss, loss of profit, fee or expense** under this policy to the **insured** will fully release the **insurer** with respect to such **loss, loss of profit, fee or expense**; and
- (d) if the **insured** is more than one entity and one such entity ceases for any reason to be covered under this policy, then the remaining entities that fall within the definition of **insured** will be considered to be the **insured** for all purposes under this policy.

H14 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **insured**, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

H15 **Assignment and Amendment**

- (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.

H16 **Cancellation**

- (a) If the premium due under this policy has not been paid to the **insurer** by the 60th day from the inception of this policy, or, where premium due to be paid by instalments, by the date on which an instalment is due, the **insurer** will have the right to cancel this policy from inception by notifying the **insured** in writing direct or via the insurance broker as appropriate.
- (b) It is agreed that the **insurer** will give not less than 30 days prior notice of cancellation under this clause to the **insured** in writing, directly or via the insurance broker. If the premium due is paid in full to the **insurer** before the notice period expires, notice of cancellation will automatically be revoked.
- (c) If any additional premium due under the terms of this policy or in respect of any amendment to the terms of this policy is not paid within 30 days of the date on which it is due to be paid, the **insurer** will not have any liability in respect of the additional rights which were to have been purchased by the **insured** by payment of the additional premium.

H17 **Sanctions**

The **insurer** shall not be deemed to provide cover nor be liable to pay any **claim** or provide any benefit under the policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

H18 **Data Protection Act 1998**

It is agreed by the **insured** 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 such insurance and handling **claims**, if any, which may necessitate providing such information to third parties.

H19 **Several Liability**

The obligations of each company insurer and Lloyds syndicate shall be several and not joint and shall be solely to the extent of that insurer's or syndicate's individual subscription. No such insurer or syndicate shall be responsible for the subscriptions of any other such insurer or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

H20 **Provision of Reports**

In the event of a **first party event** which leads to a covered loss under clauses B2 or B3, the **insured** will provide to the **insurer** all correspondence and reports produced by a **service provider** within 7 days of to assist the **insurer** in evaluating coverage. Any failure to provide all such correspondence or reports will result in the **insurer** having no liability under this policy arising out of such notification.

I Definitions

- I1 **assets** means **money** owned by the **company** or which is in the care, custody and control of the **company** and for which the **company** is legally liable.
- I2 **bodily injury** means physical injury or illness of any person (including death sustained as a result of such) mental anguish or emotional distress.
- I3 **business trend** means the trend, variations and circumstances of the **insured** either before or after the **network compromise** which would have affected the **insured** had the **network compromise** not occurred, so that the adjusted **loss of profit** will represent as closely as reasonably practicable the results which except for the **network compromise**, would have been obtained during the **period of restoration**.
- I4 **change in control** will include any one or more of the following events:
- (a) the sale, merger or change in control of the **insured**;
 - (b) material change in the business of the **insured**;
 - (c) the appointment of a receiver, liquidator, administrator or trustee in bankruptcy for that **insured**; or
 - (d) any process whereby that **insured** becomes a subsidiary of another previously unaffiliated entity, or becomes controlled by another previously unaffiliated entity by virtue of any law.
- I5 **claim** means:
- (a) a written demand for monetary or non-monetary relief arising from a **wrongful act**; or
 - (b) a written communication alleging a **wrongful act**; or
 - (c) an action alleging a **wrongful act** in a court of law or in arbitration; or
 - (d) with respect to insuring clause C2 only, a **regulatory investigation**.
- I6 **computer or communication system** means a system or network of computer hardware, software and associated electronic or communications devices that is controlled, operated or owned by the **insured**.
- I7 **confidential business information** means any non-public third party business information, whether encrypted or unencrypted, that cannot be lawfully obtained or known by the general public, including trade secrets, customer lists, drawings, financial information and marketing plans that are provided to the **insured** by a third party.
- I8 **crime loss** means direct financial loss sustained by the **insured** up until the point that such **crime loss** is first **discovered**.
- I9 **cyber terrorism** means any act or series of acts or threat thereof of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation through the use of computer systems, to destroy, disrupt or subvert any Computer or communication system and/or its content, with the intention to cause harm or committed for religious, ideological or political purposes including but not limited to the influencing of any government and/or to put the public or a section of the public in fear.
- I10 **data breach** means the unauthorised acquisition of data by an unauthorised third party (including an **employee**), disclosure or loss of data, which a **responsible person** first becomes aware of during the policy period, that compromises the security, confidentiality and/or integrity of **personal data** or **confidential business information** held by the **insured**.
- I11 **defence costs** means reasonable legal fees and expenses incurred with the prior written consent of the **insurer** in the defence of any **claim** or **regulatory investigation** which is covered under this policy.

- I12 **denial of service** attack means an attack implemented over a network or the internet intended to disrupt the normal operations of a **computer or communication system**, and to render that system inaccessible to authorised users.
- I13 **discovered** or **discovery** means when a **responsible person** first has knowledge of any act, omission or event which could reasonably be foreseen to give rise to a loss covered by this policy, even though the exact amount or details of that loss, act, omission or event are not known at the time of discovery.
- I14 **discovery period** means a period immediately following expiry of the **policy period** during which written notice may be given to the **insurer** of:
- (a) a claim first made during such period or the **policy period**, for an act, error or omission committed before expiry of the **policy period**; or
 - (b) a **first party event discovered** during such period but relating to a **network compromise, data breach** or **extortion demand** which commenced or took place during the **policy period**.
- I15 **electronic data** means information in electronic form, including but not limited to computer programs.
- I16 **employee** means a natural person who was, is, or during the policy period becomes employed by an **insured** but limited to former employees within 90 days of the formal termination of their employment with the **insured**.
- I17 **extortion demand** means any sums unlawfully demanded from an **insured** by a third party or an **employee**.
- I18 **first party event** means **network compromise**, or **data breach**, or **extortion demand** that triggers coverage under any of insuring clauses A, B1 or B3.
- I19 **gross profit** is income less expenditure of the **insured** company or companies.
- I20 **identity fraud** means the fraudulent modification, alteration, or criminal use of the insured's corporate identity.
- I21 **insured** means any one or more of the following:
- (a) the insured;
 - (b) a **subsidiary**.
- I22 **insurer** means XLC Lloyd's Syndicate 2003 and any other participating insurers.
- I23 **limit of liability** means the maximum amount that the **insurer** will pay under this policy as specified in Item 3 of the Schedule.
- I24 **loss** or **losses** means:
- (a) direct financial loss sustained by the **insured** from up until the point that such **loss** is first **discovered**;
 - (b) damages, judgments, settlements or other amounts that the **insured** is legally obliged to pay to a third party as a result of a claim which is covered under this policy;
 - (c) **defence costs**.
- loss** or **losses** does not include:
- (d) punitive, aggravated, or exemplary damages or the multiplied portion of any damages award;
 - (e) salaries, benefits fees commission, bonuses, overheads, charges or expenses, profit sharing, pensions, promotions, awards or any other employee benefits paid by the Insured earned during the normal course of employment of any **insured**;

- (f) contractual penalties, service credits, liquidated damages (but only to the extent that such liquidated damages exceed the amount for which the **insured** would have been liable in the absence of such liquidated damages clause);
- (g) civil or criminal fines or penalties which are uninsurable under the law governing this policy, the **insurer** or **insured**;
- (h) taxes incurred by any person or entity;
- (i) the **insured**'s costs or expenses of complying with any injunctive relief or any form of equitable relief; or
- (j) the monetary value of any electronic fund transfer or transactions which is lost or diminished during transfer.

I25 **loss of profit** means the amount by which A exceeds B. For the purpose of this calculation:

A = **gross profit** net of taxes that would have been earned during the **period of restoration** adjusted for **business trend** based upon the **gross profit** earned during the 2 years prior to the **network compromise**;

B = actual **gross profit** net of taxes earned during the **period of restoration**.

I26 **malware** means any unauthorised, malicious, corrupting or harmful code which has inserted itself or been designed to insert itself into a computer disk, memory stick, or into computer memory and migrate from one computer to another.

I27 **money** means currency of any type, coins, bank notes and bullion, traveller's checks, registered checks and money orders held for sale to the public. Money shall not include income, dividends, or profits.

I28 **network compromise** means any unauthorised access to, use or misuse of, modification to the **computer or communication system**, by attacks perpetrated through any and all **malware**, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks, **denial of service** attacks and any similar attacks.

I29 **operational expenses** means reasonable costs of renting additional IT equipment and other additional services, incurred in order to minimise the **loss of profit** caused by a **network compromise**.

I30 **period of restoration** means the period that begins once a **network compromise** of the **computer or communication system** or **data breach** has been **discovered and** ends on the date that any partial or total network interruption or suspension in respect of such **computer or communication system** caused by the **network compromise** or **denial of service**, is resolved by a return to normal service. The **period of restoration** will not in any event exceed the number of days specified in the policy schedule in respect of insuring clause B1.

I31 **personal data** means data which relates to a living individual who can be identified from such data.

I32 **policy period** means the period from the inception date until the expiration date as set out in the Schedule.

I33 **privacy and security wrongful act** means:

- (a) failure to reasonably protect personal data or confidential business information;
- (b) violation of any law, statute, regulation governing the authenticity, availability, confidentiality, storage, control, disclosure, or use of personal data;
- (c) violation of a law, statute or regulation that requires the insured to provide notification to affected persons of a data breach;
- (d) negligence resulting in a failure to prevent a **network compromise** that results in:
 - (i) the inability of an authorised third party user to gain access to the **computer or communication system**;

- (ii) the malicious addition, alteration, copy, destruction, deletion, disclosure, damage, removal or theft of data residing on the **computer or communication system**;
- (iii) a denial of service attack emanating from the **computer or communication system** which damages, destroys third party hardware, computer programs or electronic data residing on a third party's network; or
- (iv) the transmission of malware from the **computer or communication system** to third parties.

- I34 **regulatory fine** means an insurable civil fine or civil monetary penalty imposed by a governmental or regulatory authority for a data breach.
- I35 **regulatory investigation** means an actual or threatened investigation in writing by a regulator or governmental authority into an actual or alleged **privacy and security breach wrongful act** caused by the **insured**, or the insured's sub-contractor that may result in the imposition of a **regulatory fine** on the **insured**.
- I36 **responsible person** means any Executive Director, Chief Information Officer, Chief Security Officer, Chief Technology Officer, Head of Legal, Compliance Officer, Head of Audit, Risk Manager or Insurance Manager (or equivalent position of any of the foregoing) of the **insured**.
- I37 **retention** means the first part of **loss** sustained by the **insured** in respect of a **claim** and/or request for coverage under insuring clauses A1 – A6, B1 to B3, C1, D1, and D2 for which the **insured** is self-insured and which it will retain for its own account, and which is set out in the Schedule. In respect of insuring clause B1, **retention** shall, in addition to any monetary retention as described herein, be the period referred to in the Schedule that must pass after the start of the partial or total network interruption or suspension before the **insurer** is liable under insuring clause B1.
- I38 **retroactive date** means the date shown in Item 8 in the Declarations.
- I39 **service provider** means the **insurer's** Cyber Service Provider named in the Schedule.
- I40 **social engineering** means a plausible communication or instruction to deliver funds, purporting to come from a genuine or legitimate source provided that the recipient of the communication or instruction has a reasonable belief that such communication or instruction is genuine.
- I41 **subsidiary** means any entity, other than an investment vehicle, in which the **insured** either directly or indirectly through one or more entities:
- (a) controls the composition of the board of directors;
 - (b) controls more than half of the shareholder voting power; or
 - (c) holds more than half of the issued share capital;
- on or before the inception date of this policy. **Subsidiary** will include all those entities referred to in Item 1 of the Policy Schedule.
- I42 **theft** means the dishonest appropriation, including by violence or threat of violence, of assets by an employee, acting alone or in collusion with others, or a third party. Theft shall not include any act of dishonest appropriation which is connected to social engineering or claims arising from property the subject of piracy or theft and recoverable under Hull or War policies under Violent Theft, Piracy and Barratry extensions.

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wrongful act means:

- (a) a **privacy and security wrongful act**;
- (b) breach of confidentiality;
- (c) failing to prevent a **network compromise** or **data breach**; or
- (d) loss, theft, destruction, or misuse of tangible documents or **electronic data** in the **insured's** care, custody and control.

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