

QBE Crime Insurance



QBE

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1 How your policy works

1.1 Parties to this agreement

This **policy** is between **you** (the **insured** shown in the **schedule**) and **QBE** (the **insurer**). This document, together with its **schedule** (including any **schedules** issued in substitution), and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.2 Words in bold

Other than in the headings, words in bold carry specific meanings which are set out in the General definitions and interpretation **section**.

1.3 Policy structure

Each **section** sets out the extent of cover, how **our** liability to **you** may be limited or excluded and other relevant terms and conditions applicable to that **section**.

The cover provided by each insured **section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

Certain terms apply to the whole **policy** and they are set out in:

- a) General exceptions;
- b) How to claim;
- c) General terms and conditions;
- d) General definitions and interpretation; and
- e) Complaints.

Sums insured, limits of indemnity and **sub-limits** are set out in the **schedule** and operate in accordance with the General terms and conditions.

1.4 Your duty of fair presentation

You must make a fair presentation of **your** risk in proposing for, or proposing to vary, this insurance, having conducted a reasonable search of information available to **you**, including information held by third parties. **You** should obtain advice from **your** broker or other suitably qualified persons as to the requirements of a fair presentation.

It is important that **your** disclosure is substantially correct and presented to **us** in a clear and accessible manner.

Incomplete, incorrect or false information may result in any **claim** being rejected, the amount **you** receive being reduced or the whole **policy** being avoided.

1.5 Material changes during the policy period

1.5.1 **You** must notify **us** within thirty (30) days of any material change to the **insured, your business** or the risks insured if indemnity under this insurance is sought in relation to any such change.

1.5.2 **We** shall not indemnify **you** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless **we** have provided valid confirmation of cover, whether by an express term of this policy, endorsement, written confirmation or otherwise.

1.6 Policy period and premium

1.6.1 **We** will, in consideration of the payment of the premium and for the **period of insurance**, provide insurance in accordance with the **sections** of the **policy** shown as 'operative' in the **schedule**, subject to the conditions, exceptions and endorsements of the **policy**.

1.6.2 If any instalment of premium is not paid and accepted by **us** on or before its payment date shown in the **schedule**, **we** can give written notice to **you** at the address shown on the **schedule** cancelling the policy with effect from the seventh (7th) day after the notice has been served, but that cancellation will be prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

- 1.6.3** The annual premium remains due in full if during the current **period of insurance**:
- a) a **claim** has been made for which **we** have made payment;
 - b) a **claim** has been made which is still under consideration;
 - c) an incident has happened which is likely to lead to a **claim** but is yet to be reported to **us**.

Where the annual premium is not paid in full **we** will deduct any outstanding amounts from any claim payment.

1.7 How to claim

You must follow the provisions set out in **section** - 'How to claim' which explain the process and **your** responsibilities.

1.8 Applicable law

Unless agreed otherwise, the law applying to this **policy** is the law of that part of the **United Kingdom** where **your** head office is located on the date cover commences.

If **your** head office is located elsewhere, then unless agreed otherwise, the law applying to this **policy** is the law of England and Wales.

Any legal proceedings between **you** and **us** in connection with this **policy** will take place in the same courts as described above and they are subject to the exclusive jurisdiction of that court.

1.9 How to complain

Please refer to the **section** 'Complaints'.

1.10 Your rights including 'cooling off' period

You have the right to cancel the **policy** free of charge and to receive a full refund of premium under this **policy** provided no claims are known or reported by giving written notice within fourteen (14) days from the inception day of the **policy** to **your** insurance adviser at the address shown in their correspondence; or to **us** quoting **your policy** number.

If **you** do not cancel the **policy** within fourteen (14) days from the inception date of the **policy**, the **policy** will continue to its natural expiry, unless **you** or **us** subsequently cancel the **policy**.

Once the **policy** is cancelled **you** will not be entitled to make a claim under this **policy**.

1.11 Signature

In evidence of **our** intention to be bound by this policy, **we** print the signature of **our** Chief Executive Officer.



2 Section – Crime loss

2.1 Crime loss insuring clause

We agree to indemnify **you** in respect of **loss**, first **discovered** during the **period of insurance** or **discovery period**, which arises directly from:

2.1.1 Theft of your money, securities, funds or property

theft of your money, tangible securities, property or funds by any **employee** or by any **third party**, or by any **employee** acting in collusion with any **third party**;

2.1.2 Damage to money or tangible securities

criminal damage of money or tangible securities, as a direct result of **robbery** or **safe burglary**;

2.1.3 Theft of your clients' money, securities, funds or property

theft of the money, tangible securities, property or funds of any client, for which **you** are legally liable by any **employee** or by any **third party**, or by any **employee** acting in collusion with any **third party**.

2.2 Limit of Indemnity

Our liability under this **section** in respect of any one **loss** and in the aggregate during any one **period of insurance** shall not exceed the amount stated as the **limit of indemnity** in the **schedule** inclusive of **defence costs**.

3 Section – Crime costs

3.1 Crime costs insuring clause

We agree to indemnify **you** in respect of **loss** covered by insured **section** – Crime loss and provided such a **loss** exceeds the **excess** stated in the **schedule**, **we** also agree to pay **costs** which **you** incur with **our** prior written consent in relation to:

3.1.1 Liability costs

defending a claim first brought against **you** during the **period of insurance** by a **client** to establish liability for a **loss** covered by this **policy**:

3.1.2 Vault costs

repairing or replacing a safe or vault damaged as a result of a **theft** or **safe burglary** giving rise to a **loss** covered by this policy;

3.1.3 Data costs

reconstituting **data** lost as a result of a **theft**, **computer fraud** or **computer violation** giving rise to a **loss** covered by this policy;

3.1.4 Extent of loss costs

establishing the extent of a **loss**, provided the **loss** to which such **costs** relate is covered under this policy;

3.1.5 Property damage costs

replacement or repair cost to **property** as a direct result of **robbery** or **safe burglary** giving rise to a **loss** covered by this policy.

4 General Exceptions

This policy excludes and does not cover any:

4.1 Bodily injury

bodily injury unless arising directly from any **claim** seeking compensatory damages for mental anguish or distress where such damages arise from **claims** covered under this **policy**;

4.2 Change of control

unless otherwise agreed by **us**, **loss** caused by an act committed :

4.2.1 after the date of commencement of the winding up of **the insured** or the appointment of a receiver, administrative receiver, liquidator or administrator to the **insured**; or

4.2.2 after the date of a **take-over or merger** unless otherwise agreed by the **insurer**; or

4.2.3 prior to the date of acquisition of a **subsidiary** as regards **loss** suffered by such **subsidiary**, or

4.3 Consequential loss

consequential or indirect loss of any kind, including but not limited to any loss of dividends, income or profit not realised by **you** or any other individual or organisation because of a **loss** covered under this **policy**, but not including **interest**. **Costs** covered under this **policy** shall not constitute consequential or indirect loss;

4.4 Data

costs or expenses incurred:

4.4.1 to update, improve or redesign the programs or software of **your computer system**;

4.4.2 relating to **data** reconstitution if **you** use programs or software without the required licenses or authorisation;

4.4.3 relating to the reconstitution of **data** recorded on magnetic or optical media, unless there are analysis files, specifications and backups of software and data held elsewhere than at **your** premises;

4.4.4 to enable **data** to be used by a replacement **computer system**;

4.4.5 by an **employee plan** or **client** relating to **data** reconstitution;

4.5 Excess

The amount of the **excess** as stated in the **schedule**.

The **excess** applies in respect of any one **claim**, **circumstance** or any one occurrence (as stated in the **schedule**), potential **claim** or potential occurrence, including **defence costs** (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this policy

Where, in respect of any one **section** of the **policy**, more than one **excess** could be applied to a **claim**, **circumstance**, occurrence or other matter notified to **us**, only one **excess**, the highest **excess**, will be applied.

4.6 Fines and penalties

finer, penalties, exemplary or punitive damages or the multiplied portion of any damages;

4.7 Kidnap ransom and extortion

loss arising from kidnap or ransom or from extortion (unless the extortion is committed by an **employee**);

4.8 Loss sustained after knowledge

loss caused by an **employee** from the time any **insured** or any of the directors, partners, trustees, officers, or equivalent of any **insured** (not in collusion with such **employee**) has knowledge or information that such **employee** has committed any act or acts of fraud, dishonesty, criminal damage or theft:

4.8.1 whilst such **employee** is in any **insured's** service; or

4.8.2 during the term of such **employee's** employment with any **insured**; or

4.8.3 prior to an **employee** being employed by any **insured**, provided the act or acts involved **money**, **tangible securities**, **funds** or **property** valued at GBP15,000 or more;

4.9 Loss by natural peril

loss or damage caused to premises caused by physical cause or natural peril, including but not limited to fire, **storm**, wind, water, **flood**, subsidence, or earthquake, that results in physical damage to property;

4.10 Major shareholder 20%

loss involving any person participating in the **theft** who, at the time of committing an act which results in a **loss** covered by this policy, owns or controls more than twenty percent (20%) of the issued share capital of any **insured**;

4.11 Nuclear hazards

arising directly or indirectly from **nuclear hazards**;

4.12 Profit and loss / inventory calculation

loss, the proof of which is dependent solely upon a:

4.12.1 profit and loss computation or comparison; or

4.12.2 comparison of inventory records with an actual physical count.

However, where **you** can prove independently of such comparisons that a **loss** has occurred for which an identified **employee** was responsible, inventory records and actual physical count of inventory can be submitted as supporting the documentation of such a **loss**;

4.13 Proprietary information

loss arising directly or indirectly from the obtaining of any confidential information, including but not limited to computer programs, copyright, customer information, patents, trademarks or trade secrets unless it results from **loss** otherwise covered by Insured **section** – Crime loss;

4.14 Social Engineering Fraud

Loss arising from **Social Engineering fraud**.

4.15 Trading

loss arising from any trading or dealing in currencies, commodities, derivatives, foreign exchange, futures, options, securities, warrants and the like, unless such **loss** is covered under clause 2.1 and results in an **employee** making improper financial gain for themselves or for any other individual or organisation intended by such **employee** to receive such benefit;

4.16 War and terrorism

loss directly or indirectly arising out of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, terrorism, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority

5 How to claim

This **section** applies to the whole **policy**.

Following any event which may give rise to a claim under the **policy**, **you** must comply with the requirements set out in this **section**.

Compliance with each and every one of the requirements of the clauses under the heading 'Conditions Precedent' in this **section** is a condition precedent to **our** liability in respect of a claim under the **policy**. Unless **you** can demonstrate that any non-compliance with the requirements of these clauses has caused no prejudice to the **us** in relation to a claim under the **policy**, **we** will have no liability for such claim.

5.1 Conditions precedent

5.1.1 **You** shall give **us** written notice as soon as practicable but in any event no later than the earlier of sixty (60) days after **loss** is **discovered** or sixty (60) days following the expiry of the **policy**.

5.1.2 In addition, unless **we** agree otherwise in writing **you** shall provide **us** with a proof of loss within eight (8) months of the **loss** being **discovered**.

5.1.3 Notice will be effective on the day of receipt by **us**.

5.2 Claims notification

5.2.1 **You** may contact **us** directly or indirectly as follows:

- a) by first advising **your** insurance broker; and/or
- b) by post to QBE Claims, Acclaim House, Central Park, New Lane, Leeds, LS11 5UF; and/or
- c) telephone QBE Claims on 0800 328 9640; or
- d) by email to SMEnewclaims@uk.qbe.com

We will be able to deal with **your** claim more effectively and speedily if **you** provide **your** **policy** number on first contact.

5.2.2 Notice given under clause 5.1.1 must include sufficient details available to **you** to enable **us** to consider the claim and authorise investigation, if appropriate.

5.2.3 The proof of loss to be provided under clause 5.1.2 must be sworn by **your** Chief Financial Officer, or equivalent, with full particulars of the **loss** and any related **costs**.

5.3 Your duties

5.3.1 For each and every claim, or circumstance which might give rise to a claim under the **policy** **you** and any person acting on **your** behalf must (before and after notification of a claim):

- a) not admit responsibility, liability, make an offer or promise nor offer payment or indemnity without **our** written consent; and/or
- b) not incur any expense without **our** consent except at **your** own cost; and/or
- c) always act honestly; and/or
- d) give all such information, co-operation and assistance, and forward all **documents** and any other information as **we** may reasonably request to enable **us** to investigate, settle or resist any **claim**;
- e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;;

5.4 Our rights

5.4.1 **We** will be under no obligation to undertake the conduct of any proceedings in connection with any claim covered under this policy and will be at liberty in all cases to leave the conduct of such proceedings wholly to **you** upon such conditions as regards the payment of **costs** and with such liberty to bind **us** by compromise as **we** may in **our** absolute discretion determine.

5.4.2 **We** may at any time pay the limit of indemnity (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability except (to the extent that the limit of indemnity has not been eroded) for payment of **costs** incurred prior to the date of payment.

5.5 Basis of valuation

In no event shall **we** be liable for more than the:

- 5.5.1** value of a non sterling currency at the rate of exchange published in the Financial Times on the date a **loss** is **discovered**;
- 5.5.2** actual market value of securities at the close of business on the day the **loss** is **discovered**, or for more than the actual cost of replacing the securities, whichever is the less, plus the cost to post any lost instrument bond;
- 5.5.3** cost of blank books, blank pages or other materials, plus the cost of labour and computer time for the actual transcription or copying of **data** furnished by **you** in order to reproduce books of accounts and records not held on a **computer system**;
- 5.5.4** cost of labour for the actual transcription or copying of **data** held in a **computer system** furnished by **you**, in order to reproduce such **data**;
- 5.5.5** actual cash value of **property** at the time of a **loss** or the actual cost of repairing or replacing the **property** with property or material of like quality or value, whichever is less. The actual cash value of **property** held by **you** as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of such **property** as determined and recorded by **you** when making the advance or loan, or in the absence of a record, the unpaid portion of the advance or loan plus accrued interest at legal rates.

5.6 Loss mitigation

You shall use due diligence to ensure that all reasonable and practicable steps are taken to avoid or diminish the extent of any **loss** and any related **costs**. **You** shall take no step that might prejudice **us**.

5.7 Recoveries

Recoveries (except from insurance, reinsurance, sureties or indemnity), will be allocated in the following order:

- 5.7.1** first, any costs and expenses reasonably and necessarily incurred in relation to the recovery will be reimbursed;
- 5.7.2** second, **you** will be reimbursed for any **loss** or **costs** exceeding the limit of indemnity specified in the **schedule**;
- 5.7.3** third, **we** will be reimbursed for any settlement made; and
- 5.7.4** lastly, **you** will be reimbursed for **loss** or **costs** in respect of the **excess** specified in the **schedule**.

5.8 Subrogation

In the event of any payment under this policy, **we** shall be subrogated to the extent of such payment to all **your** rights of recovery, and **you** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable **us** effectively to bring proceedings in **your** name.

6 General terms and conditions

6.1 Acquisitions

If during the **period of insurance** **you** acquire or create any new office, branch, **subsidiary, employee plan** which:

- 6.1.1 has a total gross annual turnover and total number of **employees** which are less than 25% of **your** combined total gross annual turnover and **your** total number of **employees**; and
- 6.1.2 has not **discovered** any **loss** of a type covered by this policy within the last 3 years which, whether insured or not and before the application of any deductible or **excess**, was greater than 50% of the **excess** specified in the **schedule** to this policy; and
- 6.1.3 conducts business activities which do not vary considerably to **your** business as described in the **statement of fact**; and
- 6.1.4 is governed by controls and procedures by **you** creating or acquiring such entity which are as effective as those most recently advised to **us**;

If the acquisition does not fall within all the conditions of this clause, **you** shall have thirty (30) days to give **us** any additional information and pay any additional premium **we** shall reasonably require.

6.2 Application information

We have relied upon the information provided and/or information agreed as recorded in the **Statement of fact**. **We** have used this information to assess the terms and premium for this contract of insurance. It is very important that the information remains up to date and is correct – if it is not then **we** may not pay a claim, may void this **policy** or impose additional conditions and charge an additional premium.

6.3 Arbitration

- 6.3.1 All disputes which may arise under or in relation to this **policy**, or to its existence, validity or termination shall be referred by either party to a sole arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Chartered Arbitrators in accordance with the Arbitration Act 1996. The arbitrator shall be a national of the United Kingdom and of Queen's Counsel practising at the English bar. The place of arbitration shall be London, the language of the arbitration shall be English and the law applicable to and in the arbitration and governing all disputes shall be English law. The determination of the arbitrator will be binding on both parties.

- 6.3.2 The making of a final unappealed arbitration award will be a condition precedent to any right of action, suit or other legal proceeding against **us**. **Our** sole obligation in such circumstances shall be to pay such sums as may be directed by a final unappealed award.

6.4 Assignment

Assignment of interest under this policy will not bind **us** unless and until **our** written consent is endorsed on this policy.

6.5 Basis of contract

Any reference to 'basis of the contract' in this **policy** or in the **statement of fact** (if any) is of no effect.

6.6 Cancellation

This **policy** may be cancelled as follows:

- 6.6.1 by **you** (on behalf of all **insured**) by giving written notice:

- a. within fourteen (14) days from the inception day of the **policy** to **your insurance adviser** at the address shown in their correspondence or to **us** quoting **your** policy number, provided no claims are known or reported. **You** have the right to cancel the **policy** free of charge and to receive a full refund of premium under this **policy**.
- b) after fourteen (14) days from the inception day of the **policy** to **your insurance adviser** at the address shown in their correspondence or to **us** quoting **your** policy number, **We** may refund any unearned premium calculated pro-rata to the annual

premium except in the event of a **loss** having been **discovered** prior to the date of cancellation in which case no refund of premium shall be due; or

6.6.2 by **us** for non-payment of premium. Cancellation shall only apply fourteen (14) days following the issue of a written notice of non-payment of premium; or

6.6.3 by **us** following the issue of twenty-one (21) days written notice of cancellation by recorded delivery to **your** last known address. **You** shall be entitled to the return of a proportionate part of the premium paid in respect of the unexpired term of this **policy** provided that there have been:

- a) no claims made under the **policy** for which **we** have made a payment;
- b) no claims made under the **policy** which are still under consideration;
- c) no incident is likely to give rise to a claim but is yet to be reported to **us**;

during the current **period of insurance**

This termination will be without prejudice to **your** or **our** rights or claims incurred prior to the expiration of such notice. If a claim has been submitted or there has been any incident likely to give rise to a claim during the current **period of insurance** no refund for the unexpired portion of the premium will be given.

6.7 Compliance with policy terms

- a) **You** and anyone acting on **your** behalf must each comply with every applicable provision of the **policy**.
- b) To the extent this insurance provides a benefit to any other party, **you** shall arrange for each insured party to comply with every applicable provision of this policy.
- c) If **you** or anyone acting on **your** behalf breaches any provision of the **policy**, **we** may, without prejudice to any of **our** other rights, reject or reduce sums payable to the extent that **our** liability under the **policy** has been incurred or increased by reason of the breach.
- d) If **we** have paid any sums to **you** or anyone acting on **your** behalf for which **we** were not liable (whether by reason of breach of any provision of the **policy** by **you** or anyone acting on **your** behalf or for any other reason) **you** shall promptly repay such sums to **us**.
- e) To the extent **we** waive all or some of **our** rights in relation to any obligation on **you**, this shall not prevent **us** from relying on any provisions in the future and any delay in reliance or any partial reliance by **us** shall not prevent **us** from relying on any such provisions, in whole or in part, in the future.

6.8 Contract (Rights of Third Parties) Act 1999

This **policy** does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than **you** (solely in respect of **your** express rights under this policy). **You** and **we** may agree to or may exercise **our** respective rights to amend or cancel this **policy** or allow it to lapse without giving notice to, or requiring the consent of, any other third party.

6.9 Duty of fair presentation

You must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.

6.10 Duty of fair presentation - Remedies for breach of the duty of fair presentation – proposing for this insurance

If **you** or anyone acting on **your** behalf breaches **your** duty of fair presentation then **our** remedies shall be as follows:

- a) if such breach is deliberate or reckless, **we** may:
 - i) treat this **policy** as having been terminated from its inception; and
 - ii) retain the premium;
- b) if such breach is not deliberate or reckless and **we** would not have entered into this **policy** but for the breach, **we** may by notice to **you** treat this **policy** as having been

terminated from its inception in which case **we** shall return the premium; and

- c) in all other cases if, but for the said breach, **we** would have entered into this **policy** but:
 - i) on different terms (other than terms relating to the premium), **we** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
 - ii) would have charged a higher premium, **we** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, **we** shall pay only X% of what **we** would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$.

6.11 Duty of fair presentation - Remedies for breach of the duty of fair presentation – variation

If **you** or anyone acting on **your** behalf breaches **your** duty of fair presentation in relation to a variation of this **policy**, **our** remedies shall be as follows:

- a) if such breach is deliberate or reckless, **we** may:
 - i) by notice to **you** treat this **policy** as having been terminated from the time when the variation was concluded; and
 - ii) retain the premium
- b) if such breach is not deliberate or reckless, and **we** would not have entered into the variation but for the breach, **we** may treat this **policy** as if the variation was never made, in which case **we** shall return any additional premium relating to the variation; and
- c) in all other cases if, but for the said breach, **we** would have entered into the variation but:
 - i) on different terms (other than terms relating to the premium), **we** may require that the variation is treated as if it had been entered into on those different terms;
 - ii) would have increased the premium by more than it did or at all, **we** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, **we** shall pay only X% of what **we** would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$; or
 - iii) would not have reduced the premium by as much as **we** did or at all, **we** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, **we** shall pay only X% of what **we** would otherwise have been required to pay, where $X = (\text{premium actually charged/reduced total premium}) \times 100$.

6.12 Document Management

We may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

6.13 Fraudulent claims

6.13.1 If **you** or anyone acting on **your** behalf makes a fraudulent claim under this **policy**, **we**:

- a) are not liable to pay the claim;
- b) may recover any part of the claim already paid from the relevant **insured**; and
- c) may be notice to **you** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case **we** are not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.

6.13.2 These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

6.14 Joint Policy

Each **insured** is deemed for all purposes under this policy to be insured jointly and not separately for their several interests. **Discovery** by one **insured** shall constitute **discovery** by every **insured**.

6.15 Limit of indemnity

Our total liability under this **policy** for any single **loss** shall not exceed the limit of indemnity specified in the **schedule**.

For the avoidance of doubt the limit of indemnity is the maximum payable by **us** regardless of the number of insured parties, persons or organisations bringing claims or suits, or claims against **you** or series of claims against **you**, or claims or series of claims made by **you**.

Our aggregate liability for **costs** shall not exceed the sub-limit of indemnity specified in the **schedule** as applying to **costs**, such sub-limit of indemnity will be part of and not in addition to the limit of indemnity.

6.16 Material changes during the policy period

6.16.1 **You** must notify **us** within thirty (30) days of any material change to the **insured**, **your** business or the risks insured if indemnity under this insurance is sought in relation to any such change.

6.16.2 **We** shall not indemnify **you** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless **we** have provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

6.18 Multiple claims

All **loss** and **costs** arising from the same or related acts shall be treated as one **loss** under this policy such that only one limit of indemnity and one **excess** will apply.

6.19 Notice

Notice given by or to one **insured** shall constitute notice by or to all **insured**.

6.20 Other insurance

If there is any other valid and collectible insurance that is available to a party able to claim under this **policy** in respect of **loss** or **costs** covered by this **policy**, other than insurance that is specifically stated to be in excess of, and names **us** for the insurance by, this **policy**, then the insurance afforded by this **policy** will be in excess of and will not contribute to such other insurance.

6.21 Policy period and premium

6.21.1 The **policy** will provide insurance as described herein for the **period of insurance** provided the premium(s) and other charges are paid to and accepted by **us** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

6.21.2 The premium is deemed paid and accepted on receipt by **us** or the broker appointed to place this insurance with **us**.

6.21.3 If any premium (including a premium instalment) is not paid and accepted by **us** on or before its payment date shown in the **schedule** **we** can give written notice to **you** at **your** address shown on the **schedule**, cancelling the **policy** with effect from the seventh (7th) day after the notice has been served. Cancellation will be prevented from taking ^{effect} and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

6.22 Privacy and the Data Protection Act 1998

- 6.22.1** All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act 1998. **You** consent to all personal information so provided being used for the purposes and being disclosed to the parties set out below.
- 6.22.2** Where personal information is provided about another person, **you** are required to inform that person of the **our** identity, and why their personal information will be processed and disclosed. **You are** also required to obtain their written consent to the processing of their personal information in this way and provide **us** with such consent upon request.
- 6.22.3** Personal information is used:
- a) to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
 - b) for research, analysis, statistic creation, and customer profiling;
 - c) for fraud prevention and debt recovery.
- 6.22.4** Personal information may be disclosed to:
- a) other members of the QBE Insurance Group;
 - b) other insurance entities interested in the risk written under this policy;
 - c) agents and service providers appointed by **us** to carry out activities in connection with the **policy**;
 - d) credit reference and fraud databases;
 - e) law enforcement and other statutory bodies;
 - f) potential purchasers of the whole or part of the **our** business.
- 6.22.5** If false or inaccurate information is provided and fraud is suspected this will be recorded and the information will be available to other organisations that have access to the fraud databases.
- 6.22.6** Personal information may be transferred to third parties in countries outside the European Economic Area which may not have the same standards of protection for personal information as the United Kingdom. **We** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.
- 6.22.7** **We** maintain protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.
- 6.22.8** **We** may monitor and record all communications with **you** for compliance and training purposes.
- 6.22.9** Should **you** wish to see the information held, have any queries in relation to the way such information is used or discover any inaccuracies, **you** should write to the Data Protection Officer at QBE Insurance (Europe) Limited, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

6.23 Sanction limitation and exclusion

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

7 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face. If words do not appear in bold their meaning is determined by their context.

Where the context requires, the singular and the plural are interchangeable. References to a 'person' will be construed to include any individual, company, partnership or other legal entity. References to a statute, regulation or standard form of trade contract will be construed to include amendments or replacements. All headings within the **policy** are included for convenience only and will not affect interpretation.

7.1 Bodily injury

Bodily injury means death, disease, illness, physical or mental injury of or to an individual.

7.2 Client

Client means a customer to whom **you** provide goods or services either under a written contract or for a fee.

7.3 Computer fraud

Computer fraud means the fraudulent manipulation of computer hardware or software or **computer system** by a **third party**.

7.4 Computer system

Computer system means a computer and all connected input and output, processing, storage and communications facilities, including off-line media libraries.

7.5 Computer violation

Computer violation means an unauthorised and malicious entry of **data** into a **computer system**, change to data elements or program logic which is kept in machine readable format or introduction of instructions, programmatic or otherwise, which propagate themselves through a **computer system**, where **you** have been specifically and solely targeted.

7.6 Costs

Costs means all reasonable and necessary legal costs, charges, fees, expenses and advances in respect of the same incurred with the **our** prior written consent (other than salaries, commissions, expenses or other benefits of **employees**).

7.7 Criminal damage

Criminal damage means damage caused maliciously.

7.8 Damage

Damage means physical loss, destruction or damage of tangible property including the loss of use thereof.

7.9 Data

Data means information contained in an account, document, manuscript, microfilm, tape or in a **computer system**.

7.10 Discover, discovered or discovery

Discover, discovered or discovery means where any **insured** or any of the directors, partners, officers, trustees or equivalent of any **insured** becomes aware of any act or acts which could reasonably be anticipated to give rise to a **loss** covered by this policy, even though the exact amount or details of such **loss** are not known at that time. Such discovery shall constitute knowledge possessed or discovery made by every **insured**. In the case of a number of acts, **loss** shall be deemed to have been discovered on the date of the first discovery of any such acts.

7.11 **Discovery period**

Discovery period means the period noted in the **schedule** following the expiry of the **period of insurance** during which **you** may continue to notify claims and **discovery of loss** but only in relation to **loss** occurring prior to the expiry of the **period of insurance** and only if the policy for the **insured** is not replaced by a similar policy issued by the **insurer** or by another company. Any claim made or **loss discovered** during the **discovery period** shall be deemed to have been made or **discovered** during the immediately preceding **period of insurance**.

7.12 **Employee**

Employee shall mean a natural person, other than a director or partner, who acts under a contract of service with **you**, is paid by wages, salary or commission and whom **you** have the right to govern and direct in the performance of such service and shall include:

- 7.12.1 any directors, member of the board of directors, board of trustees or equivalent management board of the **insured** while performing acts within the usual scope of an employee;
- 7.12.2 any former employee for the first sixty (60) days following termination of service;
- 7.12.3 any person performing the duties of an employee on a temporary or part time basis;
- 7.12.4 any student, secondee or volunteer gaining work experience or performing the duties of an employee under **your** supervision;
- 7.12.5 any trustee, fiduciary, administrator, employee or officer of any **employee plan**; and
- 7.12.6 any person or employee of any entity to whom **you outsource** any administrative service during the ordinary course of business;
- 7.12.7 any employee falling under the definition of employee above whom **you** are unable to name, but who has caused a **loss** under this **policy**, provided that the evidence proves beyond reasonable doubt that the **loss** was caused by such employee;
- 7.12.8 any solicitor, other than a sole practitioner, retained by **you**, or any employee of the solicitor, whilst providing services for ;

Notwithstanding the definition above, employee shall not mean any person who works for or acts on behalf of any external auditor, external accountant, broker, investment manager, investment adviser or any financial agent or financial representative or the like.

7.13 **Employee plan**

Employee plan shall mean any pension, employee benefit, share save or share option plan or charitable fund or foundation established, maintained and controlled by **you** for the benefit of **your** past, present and future **employees** or their respective beneficiaries.

7.14 **Excess**

Excess means the first amount to be borne by **you** as uninsured loss, or the first period of time that is uninsured, whether described in the **schedule** or within the **policy** as an **excess**, self- insured **excess** or otherwise, after the application of all other terms and conditions of this **policy**.

7.15 **Flood**

Flood means the escape of water from its normal, natural or artificial confines (other than tanks, apparatus or pipes) or inundation from the sea, including rising water, surface water or waves; tidal waves or tidal water; overflow of streams, rivers lakes, ponds, or other bodies of water; spray from any of the foregoing; all whether driven by wind or not, but excluding **storm, inundation of water** and earthquake

7.16 **Funds**

Funds shall mean funds held in an account maintained at a financial institution.

7.17 **Insured/you/your**

Insured/you/your means the company named in the **schedule**, any **subsidiary company** and any **employee plan**.

- 7.18 Insurer/we/us/our**
Insurer/we/us/our means QBE Insurance (Europe) Limited
- 7.19 Interest**
Interest means simple interest on the principal amount of any **loss** calculated at the London InterBank Offered Rate as published in The Financial Times on the date of **discovery** of the **loss**. Interest is deemed to be direct financial loss.
- 7.20 Inundation of water**
Inundation of water means the sudden and unexpected build-up of excess water following a pluvius event, including the backing up of sewers or drains but excluding changes to the water table level and **flood**;
- 7.21 Loss**
Loss shall mean direct financial loss sustained by **you**. Loss includes **your** legal liability to a **client** covered under **Section** – ‘Crime loss’: Theft of **your** clients’ money, securities, funds or property.
Loss shall not include salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other **employee** benefits paid or payable by **you** or any **employee plan** where earned in the normal course of employment.
- 7.22 Money**
Money shall mean paper currency, coin, bank notes, bullion, cheques, travellers’ cheques, registered cheques, postal orders and money orders. Money shall not include **funds**.
- 7.23 Nuclear hazards**
Nuclear hazards means:
- 7.23.1** ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 7.23.2** the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 7.24 Outsource**
Outsource shall mean the retention and authorisation by **you** of a person or an organisation to perform a normal administrative service on behalf of the **insured**, provided that:
- 7.24.1** such service is performed under a written contract; and
- 7.24.2** **you** retain the right to audit the performance of such service; and
- 7.24.3** **you** can demonstrate that **you** have vetted the person or organisation for competency financial stability and honesty prior to the retention and authorisation by **you** of such person or organisation to perform such service.
- 7.25 Period of insurance**
Period of insurance means the period shown as such on the original **schedule** attaching to this policy or any replacement **schedule**.
- 7.26 Policy**
Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule**
- 7.27 Property**
Property means property but excluding **money**, **tangible securities** or **funds**.
- 7.28 Robbery**
Robbery means the unlawful taking by a **third party** from the custody of an **employee**, or any other person authorised by **you**, by violence or threat of violence, in the presence of such person.

7.29 Safe burglary

Safe burglary means the unlawful forcible or violent entry by a **third party** as shown by visible marks on a locked safe or vault situated on **your** premises.

7.30 Schedule

Schedule means the document titled **schedule** that includes the name and address of the **insured**, the premium and other variables to this standard policy (including endorsement clauses) and is incorporated in this policy and accepted by the insured. **Schedules** may be re-issued from time to time where each successor overrides the earlier document.

7.31 Section

Section means a section of this **policy**.

7.32 Social Engineering Fraud

Social engineering fraud means a communication or instruction to deliver funds, purporting to come from a genuine or legitimate source

7.33 Statement of fact

The document titled Statement of Fact which records information supplied to **us** by **you** or on **your** behalf.

7.34 Storm

Storm means rainstorm, windstorm, hurricane, tornado, tempest, cyclone and typhoon including ensuing **damage** caused by water that backs up from a sewer or drain as a direct result thereof, but excluding **flood** and earthquake.

7.35 Subsidiary company

Subsidiary company means:

7.35.1 any company in respect of which **you** (either directly or indirectly through one or more of **your** subsidiary companies):

- a) control the composition of the board of directors; or
- b) control more than half the voting power at a general meeting of shareholders; or
- c) hold more than half of the issued share capital (regardless of class of share);

7.35.2 any other company that **we** have given prior written consent to for its inclusion as a subsidiary company under this **policy**.

7.36 Take-over or merger

Take-over or merger means:

7.36.1 any sale of the majority of the issued share capital of any **insured**, or

7.36.2 any **insured's** merger with or acquisition by another entity such that the named **insured** is not the surviving entity and no longer:

- a) controls the composition of the board of directors; or
- b) controls more than half the voting power; or
- c) holds more than half of the issued share capital.

Except that this definition shall not apply if any sale of shares in the **insured** solely alters the status of the **insured** from that of a private company to that of a public company or vice versa.

7.37 Tangible securities

Tangible Securities shall mean all negotiable or non-negotiable instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security representing either **money** or **property**.

7.38 Theft

Theft shall mean fraud, dishonest taking or obtaining of the **property, money, tangible securities** and **funds** provided for in the relevant insuring clause with the intention of permanently depriving the owner of such **property, money, tangible securities** and **funds**.

7.39 Third party

Third party means a natural person other than the **insured** or an **employee**.

8 Complaints

8.1 How you can complain

You can complain about this **policy** by first contacting **your** broker.

Alternatively, if **you** wish to contact **us** directly **you** can write to:

Customer Relations, QBE Insurance (Europe) Ltd, Plantation Place, 30 Fenchurch Street, London EC3M 3BD

quoting the policy or claim reference applicable.

A summary of **our** complaint handling procedure is available on request and will also be provided to **you** when acknowledging a complaint.

8.2 About the Financial Ombudsman Service (FOS)

If, after making a complaint, **you** feel that the matter has not been resolved to **your** satisfaction, then **you** may contact the FOS to review the complaint.

To be an eligible complainant, **you** must be:

- a) a consumer;
- b) a micro-enterprise – a business that has an annual turnover of under EUR2million employing fewer than ten (10) employees;
- c) a charity with an annual income of less than £1million; or
- d) a trustee of a trust with net assets of less than £1million

If eligible, **you** can contact the FOS via its website <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>, write to the FOS, Exchange Tower, London E14 9SR, or telephone 0300 123 9 123 or 0800 023 4567.

You must refer **your** complaint to the FOS:

- a) within six (6) months of **our** final response letter; or
- b) when **we** have failed to resolve the issue within eight (8) weeks.

The FOS provides impartial advice free of charge and contacting them will not affect **your** legal rights

8.3 Financial Services Compensation Scheme

You may be entitled to compensation from the FSCS if **we** are unable to meet **our** obligations under this **policy**.

Entitlement to FSCS compensation depends on the type of business insured and the circumstances of the claim. Further information is available from www.fscs.org.uk, or **you** can write to the Financial Services Compensation Scheme, PO Box 300, Mitcheldean, GL17 1DY.

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