

QBE Cyber Insurance

Cyber and Data Security Insurance Policy



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 **section**.

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 services** 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.

A handwritten signature in black ink, appearing to read 'R. By', with a stylized flourish at the end.

2 Section – Cyber, data security and multimedia

2.1 Cyber, data security and multimedia insuring clause

We will indemnify **you** in accordance with the terms of this **section** including any applicable **sub-limit** for any **claim** during the **period of insurance** which arises out of any actual or alleged **insured event** of which **you** first become aware during the **period of insurance**.

2.2 Cyber, data security and multimedia - costs and expenses

2.2.1 Court attendance compensation

We will pay compensation to **you** if the legal advisers acting on **your** behalf require any **insured**, any **employee** or any other relevant party (not including expert witnesses), to attend court or any arbitration or adjudication hearing as a witness of fact in connection with a **claim** made for which cover is afforded under this **section** at the rates for each day or part thereof on which attendance is required as specified in the **defence costs** definition.

2.2.2 Defence costs

- i) Following any event which is or may be the subject of indemnity under this **section** **we** will indemnify **you** for **defence costs**;
- ii) Where the **schedule** states that **defence costs** are payable in addition to the **limit of indemnity** **we** will indemnify **you** for **defence costs**, provided that if the **limit of indemnity** is exhausted by the payment or settlement of any **claim** or loss **our** liability to pay **defence costs** in respect of that **claim** or loss shall be limited to such proportion of those **defence costs** as the **limit of indemnity** available for payment or settlement of that claim or loss bears to the total payment (including where applicable claimants' costs) required to dispose of that **claim** or loss.

2.3 Cyber, data security and multimedia extensions

We will indemnify **you** in respect of the following.

2.3.1 Acquisitions and creations

- a) Where **you** create or acquire any company subsequent to inception of the **period of insurance** and the declared **turnover** relating to all such created or acquired companies does not exceed ten percent (10%) of the declared **turnover** of the companies covered under this **section** at inception (less the **turnover** for any company which ceases to be an **insured**, by reason of sale or otherwise, during the **period of insurance**), then this **section** shall include as an **insured** any such company created or acquired automatically from the date of creation or acquisition without additional premium provided that:
 - i) the **business services** carried out by such company are similar to **your** own; and
 - ii) in the five years prior to the acquisition the acquired company did not pay or reserve any **claims** of a kind which would fall within the scope of cover provided by this **section** where the total paid or reserved amount was greater than the **excess** that would have applied under this **section**;
 - iii) the **retroactive date** applicable to the **business services** of the new company is deemed to be the date of acquisition;
 - iv) **you**:
 - (1) control the composition of the board of directors; or
 - (2) control more than half the voting power at a general meeting of shareholders; or
 - (3) hold more than half of the issued share capital (regardless of class of share); and
 - v) such company is not, and does not own or control, an incorporated entity in a different country to **you**.
- b) Where **you** create or acquire a company or companies subsequent to inception and the turnover relating to all such created or acquired companies exceeds ten percent (10%) of the declared **turnover** of the companies covered

under this **section** at inception (less the declared turnover for any company which ceases to be an **insured** by reason of sale or otherwise, during the **period of insurance**), then this **section** shall include as an **insured** any such company created or acquired automatically from the date of creation or acquisition provided that:

- i) the terms stated in Acquisitions and creations a)(i) to (v) above also apply to such created or acquired companies;
- ii) **you** notify **us** as soon as is reasonably practicable of the creation or acquisition;
- iii) **you** accept the revised premium and terms applying to each and every such creation or acquisition; and
- iv) all insurance in respect of such creation or acquisition will terminate thirty (30) days following creation or acquisition if terms cannot be agreed between **you** and **us**.

2.3.2 Dishonesty of employees

We will indemnify **you** against all sums which **you** become legally liable to pay as a result of any **claim** during the **period of insurance** when alleged as part of a **claim** covered by this **section** and which arises directly or indirectly from any dishonest, fraudulent, malicious or criminal act or omission of any of the **your employees** but this **policy** excludes any indemnity to the said **employee**.

2.3.3 Financial transfer indemnification

We will indemnify **you** during the **period of insurance** against the loss of **your** money, property, products, goods, services or other financial benefit, as a direct result of **you** or any service provider failing to protect against unauthorised access to or transmission of any computer malware, virus or similar mechanism to **information and communication assets** during the **period of insurance**.

2.3.4 Loss of or damage to documents

We will indemnify **you** for costs and expenses reasonably incurred in replacing or restoring **documents you** discover to be lost, damaged or destroyed and which, after diligent search, cannot be found provided that:

- a) the loss, damage or destruction was a result of an **insured event**;
- b) the discovery of such loss, damage or destruction of **documents** occurred during the **period of insurance** and is notified to **us** in accordance with the terms of this **policy**; and
- c) such coverage shall be limited to the costs, charges and expenses of whatsoever nature incurred by **you** in replacing and/or restoring such **documents** and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to prior written approval by a competent person nominated by **us** with **your** consent; and
- d) such coverage shall be limited to the loss of any **documents** which were in **your** physical custody or control or that of any other person to whom **you** entrusted, lodged or deposited such **documents** in the ordinary course of **your business services**.

2.3.5 Withdrawal of content

We will indemnify **you** against all costs and expenses, which **you** shall become legally liable to pay for and as a result of the withdrawal or alteration of any **matter** by order of a court as a result of or in mitigation of a **claim** covered by this **section** including as a result of a complaint made to the Advertising Standards Authority (ASA), the Office of Communications (Ofcom), Trading Standards Officers or any other official regulatory or self-regulatory body within the territorial limit, but only to the extent that such costs and expenses cannot be avoided or curtailed and providing that in the first instance **you**:

- a) obtain **our** approval before incurring any costs or expenses; and
- b) satisfy **us** that such matter would, if not rectified, result in damages equal to or in excess of the proposed indemnified costs and expenses; and
- c) satisfy **us** that the costs and expenses incurred are necessary to successfully avoid a **claim**.

Except that **we** will not indemnify **you** for any:

- i) payment recovered from other; or
- ii) element of profit or savings for **you** in any payment or fees; or
- iii) salaries, wages, overhead or any expenses of or associated with **you** incurred for the withdrawal of the content.

2.3.6 Telephone Phreaking – Voice/Telephony

We will indemnify **you** during the **period of insurance** against **your** financial loss as a direct result of **you** or any service provider failing to protect against unauthorised access to or transmission of any computer malware, virus or similar mechanism to **information and communication assets** which results in **your** telephone systems incurring unintended or unauthorised call charges or bandwidth charges during the **period of insurance**.

3 Section - Data breach notification costs

3.1 Data breach notification costs

We agree that in the event of a **data breach** arising from an **insured event** of which **you** first become aware during the **period of insurance**, **we** will indemnify **you** against **data breach notification costs**.

4 Section - Information and communication asset rectification costs

4.1 Information and communication asset rectification costs

We agree that in the event of a **data breach** or **insured event** of which **you** first become aware during the **period of insurance**, and in either case **information and communication assets** were damaged, destroyed, altered, corrupted, copied, stolen or misused by a **hacker**, then **we** will pay the costs to repair, restore or replace the affected parts of the **information and communication assets** to the same equivalent standard, condition, functionality, level of service and/or with the same content or as near as reasonably practicable as immediately before the **information and communication assets** were damaged, destroyed, altered, corrupted, copied, stolen or misused by a **hacker**.

5 Section – Regulatory defence and penalty costs

5.1 Regulatory defence and penalty costs

5.1.1 To the extent this **section** - Regulatory defence and penalty costs applies the General exception - 'Fines and contractual penalties' shall not apply.

5.1.2 **We** agree that in the event of an **insured event** of which **you** first become aware during the **period of insurance**, to the extent insurable by law, **we** shall pay on **your** behalf those amounts which **you** are legally obliged to pay as a result of the **insured event**, including any legal and investigation costs, as a result of a civil regulatory action, **regulatory compensatory award**, civil penalty or fines imposed against **you** by a government or public authority regulator.

5.2 Payment card industry fines

5.2.1 To the extent this sub-**section** - Payment card industry fines applies the General exceptions – 'Fines and contractual penalties' and 'Contractual liability' shall not apply.

5.2.2 **We** agree that in the event of a **data breach** arising from an **insured event** which **you** first become aware during the **period of insurance**, **we** shall pay payment card industry fines on **your** behalf as a direct result of the **data breach**, including any legal and investigation costs.

5.2.3 **Our** liability in respect of payment card industry fines and any legal and investigation costs shall not exceed GBP 50,000.

6 Section - Public relations costs

6.1 Public relations costs

We agree that in the event of an **insured event** of which **you** first become aware during the **period of insurance**, **we** will pay all reasonable costs **you** incur with **our** written consent for a public relations and crisis management consultant to avert or mitigate any significant damage to any of **your** brands and **business services** operations resulting from the **insured event**.

The public relations and/or crisis management consultants shall be chosen by **us** taking into account the nature of the **insured event** and the cost and quality of the services that they can deliver, unless **you** have reasonable cause to request a different public relations consultant and **we** and **you** mutually agree upon such consultant.

7 Section - Forensics costs

7.1 Forensics costs

In the event of an **insured event** or a **cyber extortion threat** of which **you** first become aware during the **period of insurance** **we** will, where required, pay all reasonable costs **you** incur with **our** prior written consent for:

- a) a forensic consultant to establish the identity or methods of the **hacker**;
- b) a security specialist to assess **your** electronic security and the costs of reasonable security improvement; and
- c) the temporary storage of **your electronic data** at a third-party host location, if it is viewed that **your information and communication assets** remain vulnerable to damage, destruction, alteration, corruption, copying, stealing or misuse by a **hacker**;
- d) related legal advice

The forensic consultant, security specialist or data storage facility shall be chosen by **us** taking into account the nature of any reasonable request by **you** to consider a different forensic consultant security specialist or data storage facility.

8 Section - Credit monitoring costs

8.1 Credit monitoring costs

We agree that in the event of an **insured event** of which **you** first become aware during the **period of insurance**, **we** will pay all reasonable costs **you** incur with **our** written consent for credit monitoring services in order to comply with **data breach law** provided that the provider of credit monitoring services shall be chosen by **us** taking into account **your** reasonable request to consider a different provider.

9 Section - Cyber business interruption

9.1 Cyber business interruption

9.1.1 To the extent that this **section - Cyber business interruption** applies, the General exception – 'Trading loss and liabilities' will not apply.

9.1.2 **We** will indemnify **you** for loss of business income **you** incur during the **period of reinstatement** directly as a result of the total or partial interruption, material degradation in service, or failure of **information and communication assets** caused by the failure by **you** or a service provider to protect against unauthorised access to, unauthorised use of, a **denial of service attack** against, or transmission of a **computer malware, virus or similar mechanism** to, **information and communication assets**.

9.1.3 **We** will not provide an indemnity for any losses incurred during the time excess period, being the number of hours specified in the **schedule** commencing from either:

- i) when the total or partial interruption, material degradation in service, or failure of **information and communication assets** began; or

- ii) the moment **your business income** loss began;
whichever is the later.

9.1.4 Our liability will not exceed the lesser of:

- i) the amount of **business income you** would have earned during the **period of reinstatement** but for the total or partial interruption, material degradation in service, or failure of **information and communication assets**; or
- ii) the **limit of indemnity** specified in the **schedule**.

9.1.5 Measure of indemnity

The calculation of **your** loss of **business income** shall be based on an analysis of the revenues and costs generated during each of the twelve months prior to the loss occurring (as recorded in **your** accounts) and will also take into account a projection of future profitability as close as practical had no loss occurred.

Requests made by **you** for indemnity by **us** shall be accompanied by a computation of the loss of **business income**. This shall set out in detail how the loss of **business income** has been calculated and what assumptions have been made. **You** shall produce any documentary evidence which **we** may require, and **you** shall provide every assistance to **us** in **our** investigations.

Any payment for loss of **business income** will, where applicable, be reduced by the extent to which **you** could have used or did use:

- a) damaged or undamaged **information and communication assets**;
- b) available stock, merchandise or other data; or
- c) substitute facilities, equipment or personnel.

9.1.6 Professional accountants

Any particulars or details contained in **your** books of account or other documents which may be required by **us** under **section** – ‘How to claim’ for the purpose of investigating or verifying any claim made under this **section** – ‘Cyber business interruption’ may be produced by professional accountants if at the time they are regularly acting as such for **you** and their report will be the basis for evidence of the particulars and details to which such report relates, unless any such contradictory circumstance or evidence is apparent in which case the onus to prove the loss shall be upon **you**.

We will indemnify **you** for the reasonable charges payable by **you** to **your** professional accountants for producing such particulars or details or any other proofs, information or evidence as may be required by **us** under **section** – ‘How to claim’ and reporting that such particulars or details are in accordance with **your** books of account or other documents.

10 Section - Cyber extortion

10.1 Cyber extortion

We will indemnify **you** for **cyber extortion expenses** arising from a **cyber extortion threat** during the **period of insurance** provided that:

- a) **you** can demonstrate to **us** that **you** have taken all reasonable efforts to determine that the **cyber extortion threat** is genuine and not a hoax;
- b) if a **ransom** is demanded by a **hacker** that at least one of **your** directors has agreed to the payment of the **ransom**;
- c) **you** have provided consent to the payment of the **ransom**; and
- d) **our** maximum liability will not exceed the **limit of indemnity** stated in the **schedule** inclusive of costs covered under this **section** – ‘Cyber extortion’.

11 Section – Social engineering fraud

11.1 Social Engineering Fraud

We will indemnify **you** for **your** direct losses resulting from **your** reliance on a **social engineering fraud communication** during the **period of insurance**.

12 General exceptions

This **policy** excludes the following, except to the extent that it is stated expressly that an exclusion will not apply.

12.1 Associated company

Any **claim** brought directly or indirectly by or on behalf of:

- a) any **insured** or any parent or subsidiary (as defined in the Companies Act 2006) of an **insured**; or
- b) any firm, partnership or entity in which **you** or any of **your** directors or partners has a financial or executive interest or responsibility; or
- c) any person who, at the time of the **circumstance**, is a family member of any **insured** (family member means any spouse, domestic partner, parent, parent of a spouse or domestic partner, sibling or child), unless such a person is acting wholly independently without any prior or indirect solicitation or co-operation of the **insured**;

provided that this exclusion shall not apply to such **claims** originating from an independent third party.

Except for the **insured**, **we** will not indemnify any of the aforesaid entities or persons in respect of any liability, loss or **defence costs**.

12.2 Betterment

Any costs in repairing, replacing or restoring **information and communication assets** to a level beyond that which existed prior to any **claim** or loss.

12.3 Bodily injury or property damage

Any **claim** in any way involving:

- a) **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**;
- b) **property damage** except for cover provided by **section** - Information and communication asset rectification costs, or the Loss of or damage to documents extension to **section** – Cyber, data security and multimedia .

12.4 Contractual liability

Liability arising under a contract except to the extent that such liability would have attached in the absence of such contract, unless express provision for contractual liability is included in the cover provided by the **sections**.

This exception shall not apply to fines under a merchant services agreement applicable to payment card fines.

12.5 Deliberate acts

12.5.1 Any **bodily injury**, damage, **claim**, loss, liability, expenses, costs, **defence costs** or any other sums whatsoever deliberately caused by or on behalf of **you** or any insured person.

12.5.2 This exception does not apply to damage resulting from the use of reasonable force to protect persons or property against a peril not excluded by this **policy**.

12.5.3 This exception does not apply to the extent of the cover provided by Dishonesty of employees extension to **section** – Cyber, data security and multimedia in respect of acts of dishonesty of **employees**.

12.6 Deliberate or reckless acts of defamation

Any defamatory statement that was made deliberately or recklessly by **you**, not including amendments made to **matter** by a **hacker**.

12.7 Dishonesty

Dishonest, fraudulent, criminal or reckless acts of any of **your** past or present:

- a) principals;
- b) partners;
- c) directors;

- d) officers; or
- e) trustees;

12.8 Excess

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

12.8.2 If the **excess** is stated as a temporal period then the amount so deducted shall represent the monetary amount lost in relation to the first period stated in the **schedule**, commencing from the time **you** begin to incur the insured loss to which the **excess** applies.

12.8.3 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**.

12.8.4 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.

12.9 Existing claims and circumstances

- a) Any **claim** made against **you** or which **you** made under another contract of insurance prior to the **period of insurance**; or
- b) **circumstances** notified to any previous insurer (including **us** in respect of any previous **period of insurance**), or **circumstances** known, or which ought reasonably to have been known, by **you** prior to the **period of insurance**.

12.10 Financial services

Any Regulated Activities as defined in the Financial Services and Markets Act 2000 and associated, amending and successor legislation or the equivalent in another jurisdiction or any insurance mediation activities required to be authorised and regulated by the Financial Conduct Authority or Prudential Regulatory Authority or any of their predecessors or successors in any applicable equivalent territory.

12.11 Fines and contractual penalties

- a) Any fines, penalties, liquidated damages or contractual penalties other than those that are covered under the Regulatory defence and penalty costs **section**; or
- b) any punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal or reflected in any settlement.

12.12 Gaming, gambling or lotteries

The use or provision of any gaming, gambling or lottery except when such services are included and explicitly identified as such in **business services**.

12.13 Government intervention

Confiscation, commandeering, requisition, destruction of or damage to **information and communication assets** including **personally identifiable information** by a government or public authority.

12.14 Inaccurate pricing

Inaccurate, inadequate or incomplete description of the price of goods, products or services but not excluding amendments made by a **hacker**.

12.15 Insolvency of the insured

Any claim relating directly or indirectly to an **insolvency event**.

12.16 Legal advice

Any claim relating to any failure by **you** to adhere to legal advice with regard to clearances or dissemination of **matter**.

12.17 Legislation or regulation

Your breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to the below and any equivalent acts, statutes, regulations and legislation worldwide:

- a) the Employment Retirement Income Security Act 1974 and any amendment thereto, or any rules or regulations promulgated thereunder; or

- b) any actual or alleged violations of the Racketeer Influenced and Corrupt Organizations Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules or regulations promulgated thereunder; or
- c) any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State law or any common law relating thereto; or
- d) any actual or alleged violation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act 2003 (CAN-SPAM Act).

12.18 Liability arising out of employment

The liability to any **employee**, former **employee** or prospective **employee** in respect of any obligation owed by **you** to the **employee**, former **employee** or prospective **employee** as an employer, including but not limited to employment related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

However this exclusion will not apply to the extent that **you** would be liable to such **employees** other than in their capacity as **employees** in respect of **claims** covered by:

- a) **section** - Cyber, data security and multimedia; or
- b) **section** - Data breach response costs;

12.19 Loss of goodwill

Loss of goodwill and reputational harm, other than those **claims** covered under the Public relations costs **section**.

12.20 Management liability

Any personal liability incurred by any of **your directors or officers** when:

- a) acting in that capacity or managing **your** business; or
- b) in breach of their fiduciary duty, or
- c) making or issuing any statement, representation or information concerning **you** and the **business services** contained in any accounts, reports or financial statements.

12.21 Natural perils

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 including to **information and communication assets**.

12.22 North America

Any **North American jurisdiction**, unless **jurisdiction** is stated to be worldwide in the **schedule**.

12.23 Nuclear risks and ionising radiation

Any **bodily injury**, damage, **claim**, loss, liability, expenses, costs or **defence costs** whatsoever caused by:

- a) ionising radiations or **contamination** by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

12.24 Patent

The infringement of any patent.

12.25 Products liability

Any **claim**, liability, loss or **defence costs** directly or indirectly arising out of, or in any way involving goods or products (being tangible property or merchandise) sold, supplied, repaired, altered, treated, manufactured, installed or maintained by **you** or on **your** behalf.

12.26 Pollution, Asbestos or electromagnetic fields

Any claim:

- a) for **bodily injury**, sickness, disease, death or **property damage** directly or indirectly caused by **pollution** or **contamination**;
- b) for removing nullifying or cleaning-up seeping, polluting or contaminating substances;

- c) directly or indirectly arising out of resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;
- d) directly or indirectly arising out of electromagnetic fields, electromagnetic radiation or electromagnetism.

12.27 Reports and accounts

Breach of any obligation owed by **you** regarding any statement or representation (express or implied) contained in **your** report and accounts, reports or financial statements, or concerning **your** financial viability.

12.28 Retroactive date

Any **insured event** committed or alleged to have been committed, prior to the **retroactive date**.

12.29 Returned Fees

The return, restitution or offset of fees, expenses or costs either by service level credits or by any other means.

12.30 Territorial limit

An act or alleged act committed outside the **territorial limit** and/or from any **claim** first brought in a court outside the **jurisdiction**.

12.31 Trading loss and liabilities

- a) **Your** lost profit, mark-up or liability for Value Added Tax or its equivalent; or
- b) **Your** trading loss or trading liability including those arising from the loss of any client, account or business,

other than those **claims** covered under the **section** - Cyber business interruption.

12.32 Unlicensed software

Your knowing use of software in breach of any intellectual property rights of another party, beyond the terms permitted by a licence granted to **you**, or in breach of applicable legislation or regulation.

12.33 Utility service provider

The failure of an internet, telecommunications or electricity provider or other utility provider except when such services are included in **business services**.

12.34 War and terrorism

12.34.1 Any **bodily injury**, damage, **claim**, loss, liability, expenses, costs or **defence costs** of whatsoever nature caused by:

- a) **war** or **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence; or
- b) any action taken in controlling, preventing, suppressing or in any way relating to **war** or **terrorism**

In any action, suit or other proceedings where **we** allege on reasonable grounds that by reason of this exclusion any claim is not covered by this **policy**, **you** must show that **we** are liable to pay such claim.

12.34.2 The unlawful act of a **hacker** that damages **your information and communication assets** shall not be regarded as an act of **terrorism**.

12.35 Wear and tear

Wear and tear of **information and communication assets** including depreciation and obsolescence.

13 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.

13.1 Conditions precedent

Other than as stated under a) below, **You** must give notice and in writing to the claim notification address specified under Claims notification, below within the following periods:

- a) **You** must immediately give notice to the **cyber and data security representative** in the event of any of the following:
 - i) a breach of or interruption to **your** IT network caused by the failure by **you** or a service provider to protect against unauthorised access to, unauthorised use of, a **denial of service attack** against, or transmission of a **computer malware, virus or similar mechanism** to, **information and communication assets**; or
 - ii) a **data breach**; or
 - iii) a **cyber extortion threat**;
- b) in respect of **section** - Cyber, data security and multimedia: as soon as reasonably practicable of any **claim** or **circumstance**, but in any event not later than seven (7) days from receipt of any **claim** or any notice of the intention to make a **claim**, provided always that such written notice is given to **us** during the **period of insurance** or (if **you** do not renew this **policy** with **us**) within thirty (30) days of its expiry;
- c) in respect of **section** - Data breach response costs; **section** – Information and communication asset rectification costs; **section** - Regulatory defence and penalty costs; **section** - Public relations costs; **section** – Forensic cost; or **section** – Credit monitoring costs: as soon as reasonably practicable but in any event no later than seven (7) days, after **you** first receive a **claim**, or any notice of the intention to make a **claim** or discover a **data breach** provided always that such notice is given to **us** within the **period of insurance**;
- d) in respect of **section** - Cyber business interruption: as soon as reasonably practicable, but in any event not later than seven (7) days after:
 - i) any **claim** made under **section** - Cyber, Data Security and Multimedia;
 - ii) discovery of any other **circumstances** involving **information and communication assets** that may give rise to a claim under **section** - Cyber business interruption;
 - iii) provided always that such notice is given to **us** within the **period of insurance**;
- e) in respect of **section** - Cyber extortion, promptly, but in any event no later than seven (7) days, after a **cyber extortion threat** provided always that such notice is given to **us** within the **period of insurance**. In addition **you** must inform or allow **us** or the **cyber and data security representative** to inform the appropriate law enforcement authorities of the **cyber extortion threat**.

13.2 Claims notification

13.2.1 **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.

13.2.2 In relation to any cover provided by this **policy**, if:

- a) **you** notify **us** of **circumstances** during the **period of insurance** in accordance with the requirements of this **section**; and
 - b) such notification includes all relevant facts which may give rise to a **claim**, to the extent known or reasonably accessible to **you**; and
 - c) **we** are satisfied that a **claim** may arise from the **circumstances** notified;
- we** will treat any **claim** subsequently arising directly from such **circumstances** as though the **claim** had been notified during the **period of insurance**.

13.3 Your duties

For each and every **claim**, a **circumstance** or 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;
- b) not incur any expense without **our** consent except at **your** own cost;
- c) always act honestly;
- 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;
- f) on the happening of any damage in consequence of which a claim is or may be made under **section** - Business Interruption, with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or check any interruption of or interference with the **business services** or to avoid or diminish the loss;
- g) not destroy evidence or supporting information or **documents** without **our** prior consent; nor destroy any plant or other property relating to an occurrence, loss or suit that may give rise to a claim under this **policy**.

13.4 Claim procedure

Unless stated otherwise, all claims will be handled and overseen by **us** but day to day handling may be managed by a third party claim management company or loss adjuster. Following notification of a claim, **you** and any person acting on **your** behalf must:

- a) upon receiving any request, demand, order, notice, summons, legal paper and all **documents** relating thereto in connection with an **insured event** immediately and in any event within three (3) working days provide copies of these to **us**. In addition where reasonably practical **you** must co-operate with **us** or **our** appointed agents to allow them to comply with such relevant practice directions and pre- action protocols as may be issued and approved from time to time by the head of civil justice;
- b) authorise **us** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an insured event involving **bodily injury**;
- c) for **property damage** and related claims, within thirty (30) days after damage (or expiry of the **indemnity period** for losses limited by a **period of reinstatement**) or such further time as **we** may in writing allow, at **your** own expense, deliver to **us** a claim in writing, containing as particular an account as may be reasonably practical of the several articles or portions of property damaged and the amount of the damage thereto respectively, having regard to their value at the time of the damage, together with any details of any other insurance on any property insured and 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.

13.5 Our rights

13.5.1 **We** shall have control of any valid claim or valid potential claim and shall have full discretion as to the conduct of any defence or settlement of any such claim or potential claim.

13.5.2 If **we** pay the **limit of indemnity** or such lesser sum for which **we** in **our** discretion determine the claim can be settled, **we** shall immediately relinquish control of the claim and shall have no further liability except for the payment of any **defence costs** (where payable in addition to the **limit of indemnity**) which are incurred prior to the date of payment of the **limit of indemnity**.

13.5.3 **We** may by notice to **you** require **you** to reimburse **us** for payments made by **us** under the **policy** to the extent that such payments are made within the **excess**.

13.6 Payment or reimbursement of excess

If settlement of an **insured event** investigated or defended by **us** under the **policy** does not exceed the amount of the applicable **excess**, **you** will pay, or reimburse **us**, as applicable, for any indemnity, **defence costs** or other sums paid (including claimant costs recoverable from **you**) or incurred by **us** in connection with such **insured event**.

14 General terms and conditions

14.1 Assignment

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

14.2 Basis of contract

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

14.3 Cancellation

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

14.4.1 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

14.4.2 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

14.4.3 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.

14.4 Claiming under more than one section

If it is possible for **you** to bring a claim under more than one **section** then **you** may elect to submit a claim against the **section** which offers the maximum amount of payment.

You are not permitted to submit a claim under more than one **section** which seeks the same indemnification in respect of the same cause of loss or costs associated with that loss in any one **period of insurance**.

14.5 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.

14.6 Confidentiality

You will not disclose the terms, conditions, exclusions, or the **limit of indemnity** of this **policy** or the amount of the premium paid to any third party except to the extent that **you** are required to do so by law, for contractual purposes, or **we** consent in writing to such disclosure.

14.7 Consent

Where cover under this **policy** is subject to **our** consent, such consent will not be unreasonably withheld or delayed.

14.8 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 or any amending or subsequent legislation by any person who is not named as the **insured** and both **we** and **you** may amend, cancel or lapse this **policy** without giving notice to, or requiring the consent of, any other third party. However, this will not preclude rights enforceable under the Third Parties (Rights against Insurers) Act 1930 or 2010.

14.9 Contribution

If at the time of any damage or liability arising under this **policy** there shall be any other insurance covering such damage or liability or any part thereof **we** shall not be liable for more than **our** proportional share thereof.

14.10 Dispute Resolution

All matters in dispute between **you**, any other party covered by this **policy** and **us** arising out of or in connection with the construction or formation of this **policy** will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed, then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator. The reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

The parties shall continue to perform their respective continuing obligations under this **policy**, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take, the dispute may be referred by either party to court, subject to the law and jurisdiction set down in the Applicable law clause of this **policy**.

14.11 Disputed defence or appeal

If any dispute arises between the **insured** and the **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Queen's Counsel (or solicitor with at least 20 years' experience in the field of insurance law) to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final. In the event of conflict between any parties insured under this **policy** separate representation will be arranged for each party.

14.12 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.

14.13 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.

14.14 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 $X = (\text{premium actually charged/higher premium}) \times 100$.

14.15 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 it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/reduced total premium}) \times 100$.

14.16 Exchange Rate

In the event of a payment being made under this **policy** in any other currency than pounds sterling (GBP), the exchange rate applicable will be the rate of exchange published in the Financial Times at the date that settlement is agreed.

14.17 Fraudulent claims

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 by 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.

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

14.18 **Inspection and audit**

We, or such representative as **we** may designate, will be permitted but not obligated to inspect **your** property and operations at any time given reasonable notice. Neither **our** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of **you** or others to determine or warrant that such property or operations are safe.

14.19 **Insurance Act 2015**

Nothing in this **policy** is intended to put **you** in a worse position than **you** would be in by virtue of the provisions of Parts 2, 3 and 4 of the Insurance Act 2015. To the extent of any conflict between the terms of this **policy** and the requirements of Parts 2, 3 and 4 of the Act, the latter will prevail, unless the contrary intention is expressly noted in an endorsement to this **policy**.

14.20 **Limits of indemnity**

For the purpose of this clause, any and all of **our** liability under this **policy** associated with a loss or **claim**, whether **defence costs**, additional costs or expenses or any other sums whatsoever shall be treated as part of the loss or **claim**.

- a) In respect of each **section**
 - i) **our** liability shall not exceed any applicable **sum insured**, **limit of indemnity**, **sub-limit** or **period of reinstatement**;
 - ii) where a **limit of indemnity** or **sub-limit** is stated in the **schedule** to be in the aggregate, that is the maximum **we** will pay for any and all cover whatsoever to which that limit applies in any one **period of insurance**;
 - iii) any sub-limit for a specified cover identified in the **schedule** applies as the limit **of indemnity** for that cover and is deemed to be part of and not in addition to the applicable **limit of indemnity** unless expressly stated otherwise in the **sections** or **schedule**;
 - iv) any additional cover, extension or endorsement is deemed to be part of and not in addition to the applicable **limit of indemnity** unless expressly stated otherwise in the **sections**, **schedule** or endorsement;
 - v) the **sum insured**, **limit of indemnity** and any **sub-limit**, as applicable, is additional to the **excess**;
 - vi) the **limit of indemnity** and any **sub-limit** is inclusive of any cover for **defence costs** unless expressly stated otherwise in the **sections** or **schedule**;
 - vii) where provided, a **limit of indemnity** or **sub-limit** will always be in the aggregate in respect of any **North American jurisdiction** inclusive of **defence costs** and any other sums whatsoever;
 - viii) where a **limit of indemnity** or **sub-limit** is stated in the **schedule** to apply to any one occurrence, any one claim, any one prosecution, any one **premises**, each and every claim or series of claims or similar term that limit is subject to the Multiple and related claims (aggregation) clause and/or terms in specific **sections** which determine how the limits apply to multiple claims.

14.21 **Multiple and related claims (aggregation)**

- a) For the purpose of this clause, any and all of **our** liability under this **policy** associated with a loss or **claim**, whether **defence costs**, additional costs or expenses or any other sums whatsoever shall be treated as part of the loss or **claim**.
- b) The **excess** and **limit of indemnity**, **sub-limit** and/or **period of reinstatement** applying to any one loss or **claim** apply to all losses or **claims** or series of losses or **claims** arising out of the same original cause, event or **circumstance**.

- c) The provisions of this clause apply regardless of the number of:
 - i) parties insured under this **policy**;
 - ii) persons or organisations bringing claims; or
 - iii) claims made by or against **you**.

14.22 Other insurance

- a) If at the time of any claim made under this **policy** there is any other valid and collectible insurance available to **you** or any other party covered by such **sections**, other than insurance that is purchased as and stated specifically to be a policy operating in excess of this **policy** and which names **you** or the other party covered by this **policy**, then the insurance afforded by such **section** will be in excess of and will not contribute with such other insurance.
- b) This **policy** shall under no circumstances be made subject to the terms, limitations, conditions and definitions of any other insurance, except that if any other insurance is subject to any condition of average, then the insurance provided by any **section** if not already subject to a condition of average will be subject to average in like manner.
- c) For the purposes of this condition, other insurance shall not cease to be regarded as 'valid and collectible' merely because **you** have failed to comply with any notification or other claim conditions which apply to such other insurance.
- d) This condition is subject to any contrary provision within the specific **sections**.

14.23 Premium adjustment

Where the premium in whole or part is provisionally based on estimates provided by **you**, **you** will keep accurate records and declare such information as **we** require within three (3) months of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to **you** as the case may be but subject to any minimum premium that may apply. Where the difference results in an additional charge or refund of premium of less than GBP20.00 any such charge or refund will be waived and not processed. If this difference results in an additional charge or refund of premium greater than GBP20.00 this sum will be charged or refunded via **your** intermediary.

We reserve the right to request that **you** supply an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

14.24 Privacy and the Data Protection Act 1998

- a) 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.
- b) Where personal information is provided about another person, **you** are required to inform that person of **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.
- c) Personal information is used:
 - i) to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
 - ii) for research, analysis, statistic creation, and customer profiling;
 - iii) for fraud prevention and debt recovery.
- d) Personal information may be disclosed to:
 - i) other members of the QBE Insurance Group;
 - ii) other insurance entities interested in the risk written under this **policy**;
 - iii) agents and service providers appointed by **us** to carry out activities in connection with the **policy**;
 - iv) credit reference and fraud databases;
 - v) law enforcement and other statutory bodies;

- vi) potential purchasers of the whole or part of **our** business.
- e) If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the fraud databases.
- f) 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 data protection law and the personal information is kept securely and protected from unauthorised access.
- g) **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.
- h) **We** may monitor and record all communications for compliance and training purposes
- i) 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.

14.25 **Records**

We may hold **documents** relating to this **policy** 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.

14.26 **Representation**

Where more than one entity or person is insured by this **policy**, the first **insured** named in the **schedule** will act on behalf of any other party insured by this **policy** with respect to the giving and receiving of any notices from **us** or **our** representatives including any notice of cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy **our** obligations to return premium to any other party covered by this **policy**.

14.27 **Risk minimisation**

- a) **You** will take all reasonable steps at **your** own expense to prevent an **insured event** arising or continuing.
- b) Upon the happening of an **insured event** and at all times thereafter, **you** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that **insured event**. Any failure by **you** to take such steps shall reduce or extinguish **our** liability to indemnify **you** under the **policy** to the extent that such failure has increased the claim under the **policy**.

14.28 **Sanction limitation and exclusion**

We 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 **us** or any member of **our** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

14.29 **Severability**

- a) The **proposal** shall be construed as a separate application for insurance under this **policy** by each **insured**. No statements in the **proposal** or knowledge possessed by any one (1) **insured** shall be imputed to any other **insured**.
- b) For the purpose of determining the applicability of the **policy** exclusions and limitations, the act or knowledge of any one **insured** shall not be imputed to any other **insured**.

14.30 **Subrogation**

- a) For each and every claim, **you** and any person acting on **your** behalf must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or **claim** that may give rise to a claim under this **policy**.

- b) **You** or any other party insured by this **policy** will, at **our** request and expense, do and concur in doing and permit to be done all such acts and things as **we** may necessarily or reasonably require for the purpose of enforcing any rights and remedies, whether such acts and things will be or become necessary or required before or after **your** indemnification by **us**.
- c) In the event of any payment under this **policy**, **we** will act in concert with all other interested persons (including **you**) concerned in the exercise of any rights of recovery.
- d) The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including **you**) who will have paid an amount over and above any payment hereunder will first be reimbursed up to the amount paid by them; **we** are then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including **you**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- e) Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned in the ratio of their respective recoveries as finally settled.

15 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

15.1 Bodily injury

Death, disease, illness, physical or mental injury of or to an individual.

15.2 Business income

The amount of net profit if any before taxes which would have been earned by the **business** adjusted to take account of:

- a) the trend of the business, reasonable business variations, seasonal influences, prevailing economic conditions and other variations or circumstances that have an influence upon the business;
- b) the cost of working; and
- c) any costs savings which **you** can reasonably achieve.

15.3 Business services

Your activities including:

- a) **your** services provided for **your** clients, in connection with **your** Business as specified in the **schedule**
- b) **your multimedia activities**
- c) provision and management of canteens, sports, social and welfare and medical organisations for the benefit of **employees** and/or **your** pensioners, sponsorships, medical, dental, nursing, first aid, fire, rescue and ambulance services, principally in connection with but not limited to **your** operations;
- d) provision of security services for **your** benefit;
- e) provision of nursery, crèche or child care facilities where incidental to the activities stated;
- f) provision of educational facilities;
- g) property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
- h) organisation of and participation in exhibitions, trade fairs, conferences and the like;
- i) private work undertaken by any **employee** for any fellow principal **employee** or **your** directors, partners or executives;
- j) employment of subcontractors for performance of work on **your** behalf;
- k) the organisation of charitable events or similar fund raising activities;
- l) sponsorship of events, organisations, entities and individuals;
- m) repair, maintenance and servicing of **your** own mechanically propelled vehicles and the sale or disposal of **your** own property and goods, including owned mechanically propelled vehicles;
- n) provision of gifts and promotional material incidental to the business.

15.4 Circumstance

An incident, occurrence, dispute, fact, matter, act or omission that may give rise to a **claim**.

15.5 Claim

- a) the receipt by **you** of any written notice of demand for compensation made by a third party against **you**;
- b) any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon **you**;
- c) any notice of intention in writing to commence legal proceedings against the **you**.

Where the word claim is used as an undefined term (i.e. not in bold) it refers to a claim by **you** under the **policy**, unless the context otherwise requires.

15.6 Computer equipment

All computer equipment including software, interconnecting wiring, fixed disks, telecommunications equipment and all components thereof used for the storage, processing or communication of electronically processed data.

15.7 Computer malware, virus or similar mechanism

Any computer program or code, including but not limited to, any malicious software, file, virus, boot sector virus, macro virus, hostile applet, Trojan horse program, java virus, ActiveX virus, worm, logic bomb or other executable program or code which initiates an event on infected **computer equipment**, causing modification of or damage to data, memory or data media or otherwise adversely affecting the operation of or access to any information and communications technology system.

15.8 Contamination

The unwanted presence of a substance, constituent, contaminant or impurity.

15.9 Cyber and data security representative

ReSecure, whose contact details are: +44 (0)203 060 6800

15.10 Cyber extortion expenses

Reasonable and necessary expenses incurred by **you** including the value of any **ransom** paid by **you** for the purpose of terminating a **cyber extortion threat**.

15.11 Cyber extortion threat

A threat from a **hacker** to:

- a) damage, destroy, alter, corrupt, copy, steal or misuse **information and communication assets** including by introducing a **computer malware, virus or similar mechanism**;
- b) cause a failure of the security protecting **information and communication assets**;
- c) attack **information and communication assets** in order to restrict or prevent access to **information and communication assets** by authorised persons or entities;
- d) divulge **information and communication assets** into the public domain which will cause commercial or financial harm; or
- e) fraudulently use **information and communication assets** to cause a loss to either a third-party or **you**.

15.12 Data breach

Failure by **you** (whether directly or by a **service provider**) to comply with any **data breach law**.

15.13 Data breach law

Statutes and regulations, as they currently exist and as amended and replaced from time to time, within the **jurisdiction**, associated with the confidentiality, access, control and use of **personally identifiable information** including, but not limited to the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, all published guidance by the Information Commissioners Office, successor legislation to any of these and equivalent statutes and regulations worldwide.

15.14 Data breach notification costs

Those reasonable and necessary expenses incurred by **you** or which the **insured** becomes legally obliged to pay for the provision of consumer notifications to comply with **data breach law** following a **data breach** including:

- a) the legal fees incurred to identify notification communication obligations and draft notification communications;
- b) the costs to draft, send and administer notification communications;
- c) the costs of call centre services to respond to enquiries and queries following a notification communication.

15.15 Defence costs

- a) Costs (other than claimant costs recoverable from **you** or any other party insured by this policy) incurred at **your** request with **our** prior consent in the investigation, adjustment, appraisal, defence or settlement of an **insured event**, including expert, legal, appeal and defence costs;
- b) costs and expenses incurred by **you** in pre-trial and case reviews;
- c) pre-judgment interest awarded against **you** on that part of any judgment covered under this **policy** but where **we** offer to pay the **limit of indemnity** in settlement of a **claim** or suit, **we** will not pay any pre-judgment interest imposed or accruing after the date of such offer;
- d) all interest accruing on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **we** have paid, offered to pay or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;
- e) the cost of attendance in court as a witness at **our** request, payable at the following rates per day on which attendance is required:
 - i) any of **your** principals directors or partners - GBP500;
 - ii) any insured person - GBP250;
 - iii) any other relevant party – GBP200 (subject to **our** prior agreement); or
- f) costs incurred at **your** request, with **our** prior consent, of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**.

Defence costs do not include **your** own internal costs and expenses, management or employee time or any adjusters' fees for which **we** will not provide any indemnity.

15.16 Denial of service attack

Any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems. Denial of service attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

15.17 Director or officer

A director or officer of the company.

15.18 Documents

Deeds, wills, written agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method, including **electronic data**, but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

15.19 Electronic data

Facts, concepts and information converted to a form usable for communication, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment, including encrypted electronic certificates, encrypted electronic signatures, firmware, programmes, software, website and other coded instructions for such equipment.

15.20 Employee

Any person including trainees and freelance consultants acting under a contract of service with **you** in respect of the conduct of **your business services**. **Employee** does not include any of **your** principles, shareholders, partners, directors or members in their capacity as such.

15.21 Excess

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**.

15.22 Hacker

Anyone who gains unauthorised access to **information and communication assets** by circumventing electronically or otherwise the security system in place to protect against such unauthorised access. **Hacker** will also include anyone who threatens to specifically target **you** and gain unauthorised access to **information and communication assets**. **Hacker** does include **employees** but does not include any of **your** principals shareholders, partners, directors or other officers.

15.23 Information and communication assets

Your computer and telecommunication system software and hardware, including but not limited to **your** email system, intranet, network, internet-connected telephone system, or any **electronic data**, including where provided by a **service provider**.

15.24 Insolvency event

- a) An application being made for an administration order or the purported appointment of, or the filing at court or issue of any notice of intention to appoint, an administrator in relation to the **insured** or any **subsidiary company**;
- b) a petition being presented, a meeting being convened or an effective resolution being passed otherwise than with the prior written consent of the insurer as part of a solvent reconstruction or amalgamation for the winding up of the **insured** or any **subsidiary company**;
- c) possession being taken of, or a receiver, sequestrator or similar officer being appointed in respect of, the whole or any part of the assets or undertaking of the **insured** or any **subsidiary company**;
- d) the **insured** or any **subsidiary company** suspending or threatening to suspend payment of its debts as they fall due or being, or unlikely to become, unable to pay its debts, whether within the meaning of Section 123 Insolvency Act 1986 or otherwise;
- e) the directors or partners of the **insured** or any **subsidiary company** making a proposal that it enter into a voluntary arrangement (within the meaning of Section 1 of the Insolvency Act 1986) or taking any steps to obtain a moratorium under Section 1A of that Act or its taking or being subject to any proceedings under the law for the readjustment, rescheduling or deferment of all or any of its debts, or proposing or entering into any general assignment or composition with or for the benefit of its creditors;
- f) the **insured** or any **subsidiary company** ceasing or threatening to cease to carry on all or a substantial part of its business or operations, or selling, transferring or otherwise disposing of the whole or a substantial part of its undertaking or assets, either by a single transaction or by a number of transactions; or
- g) the occurrence in respect of the **insured** or any **subsidiary company** of any event in any jurisdiction to which it is subject having an effect similar to that of any of the events referred to in paragraphs a) to f) above.

15.25 Insured/you/your

- a) the company or other organisation shown as insured in the **schedule** including any **subsidiary companies** of the insured that are in existence at the inception date of the insurance and have been declared to **us** until such time as they may

be sold or otherwise disposed of (but not excluding any liabilities incurred prior to disposal), and

- b) the persons or people shown as insured in the **schedule**;
- c) the partners and/or directors or members of the **insured** or **employees** during the **period of insurance** or thereafter;
- d) former partners and/or former directors and/or former members and/or former **employees** of the insured;
- e) any retired partner, director or member of the insured remaining as a consultant to the insured;
- f) the estate, heirs and executors and/or legal/personal representatives of those parties mentioned above in the event of their death, incapacity, insolvency or bankruptcy for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

15.26 Insured event

15.26.1 Failure by **you** or any service provider to protect against:

- i) unauthorised access to, unauthorised use of, a **denial of service attack** against, or transmission of any **computer malware, virus or similar mechanism** to **information and communication assets**;
- ii) improper deep-linking, framing, web scraping, web harvesting or web data extraction;
- iii) unintentional transmission of any **computer malware, a virus or similar mechanism**; or
- iv) unintentional violation of any government or public authority legislation or regulation regarding privacy or data-protection;

15.26.2 Any form of invasion, infringement or interference with rights of privacy or publicity by **you** or any service provider, including:

- i) false light;
- ii) public disclosure of private facts;
- iii) intrusion;
- iv) breach of confidence; or
- v) commercial appropriation of name or likeness

following failure by **you** or any **service provider** to properly handle, manage, store, destroy or otherwise control:

- vi) **personally identifiable information**; or
- vii) third party corporate information in any format held by **you**, including that protected under a non-disclosure agreement or similar contract with **you**;

15.26.3 Commission by **you** or any **service provider** of defamation or other tort related to disparagement of character, reputation or feelings of any person or organisation, including:

- i) libel;
- ii) slander;
- iii) product disparagement;
- iv) trade libel;
- v) infliction of emotional distress;
- vi) malicious falsehood;
- vii) outrage or outrageous conduct;
- viii) breach of comparative advertising regulations; or
- ix) failure to attribute authorship or provide credit under any agreement to which **you** are a party;

arising from **multimedia activities**; or

15.26.4 Infringement by **you** or any **service provider** of intellectual property rights including but not limited to:

- i) copyright;
- ii) design;
- iii) title;
- iv) slogan;
- v) trades secret;
- vi) trademark;
- vii) trade name;
- viii) trade dress;
- ix) service mark;
- x) service name;
- xi) domain name or metatag;
- xii) database rights;
- xiii) breach of moral rights (including failure to attribute authorship or provide credit under any agreement to which **you** are a party);
- xiv) passing off;
- xv) plagiarism;
- xvi) piracy or misappropriation of ideas under implied contract, including a breach of a hold harmless or indemnity agreement specified in a written contract for the supply of **matter**.

arising from **multimedia activities**.

15.27 Insurer/we/us/our

The party specified as insurer in the **schedule** and any other subscribing insurers.

15.28 Jurisdiction

The jurisdiction (if any) specified in the **schedule** as applying to a **section**.

15.29 Limit of indemnity/Sub-limit

The limit of indemnity or sub-limit of indemnity identified in the **schedule**.

15.30 Matter

Any data, text, sounds, images or similar content disseminated, including but not limited to the content of the **insured's** email, intranet, extranet, website, bulletin board, chat room or other on-line discussion or information forum, and the marketing and advertising of the **insured's business services**.

15.31 Multimedia activities

The publishing, dissemination, releasing, gathering, transmission, production, webcasting or other distribution of **matter** by **you**.

15.32 North America

The United States of America or its territories or possessions or Canada.

15.33 North American jurisdiction

Any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which form part of **North America**, or which operates under or applies the laws of such countries or any states, provinces or territories forming part of them, including arbitration or regulatory proceedings, and any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part.

15.34 Period of insurance

The period shown as such in the **schedule**, with times being local to the **insured's** address as stated in the **schedule**.

15.35 Period of reinstatement

The period commencing from the total or partial interruption, degradation in service, or failure of **information and communication assets**, and ending either:

- a) at the time when **we** are satisfied **information and communication assets** are repaired, restored and/or replaced to the same equivalent standard, condition, functionality, level of service and/or with the same content, or as near as reasonably possible as immediately before the total or partial interruption, material degradation in service, or failure of **information and communication assets** began; or
 - b) ninety (90) days thereafter;
- whichever is the sooner

15.36 Personally identifiable information

Any information from which an individual may be uniquely and reliably identified or contacted, including an individual's name, telephone number, national security number, medical or healthcare data, drivers licence number, bank or building society account number, credit card number, debit card number, access code or password that would permit access to that individuals financial account.

15.37 Policy

This document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule**.

15.38 Pollutant

Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, dust, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.

15.39 Pollution

Discharge, seepage, migration, dispersal, release or escape of **pollutants**.

15.40 Property Damage

Physical loss, destruction or damage of tangible property including the loss of use thereof.

15.41 Proposal

Any information supplied by **you** or on **your** behalf in written or electronic format, including in each case attachments thereto and other relevant information that **we** may require.

15.42 Ransom

Any money, products, goods, services, property, or other financial benefit of the **insured**.

15.43 Regulatory compensatory award

Regulatory compensatory award means a sum of money which **you** are legally obliged to pay as an award or fund for the affected individuals following a regulators monetary award to a third party. This does not include any criminal penalty or fine.

15.44 Retroactive date

The date (if any) specified in the **policy** (including the **schedule**).

15.45 Schedule

The document titled **schedule** that includes the name and address of the **insured**, the premium and other variables to this **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.

15.46 Section

A **section** of this **policy**.

15.47 Service provider

A company **you** do not own, operate, or control, but that **you** hire for a fee under contract to perform services for **you** or on **your** behalf.

15.48 Social engineering fraudulent communication

A communication designed to mislead an **employee** into transferring **your** or **your** customer's money, property, products, goods, services or other financial benefit to an incorrect recipient from which **you** cannot recover such money, property, products, goods, services or other financial benefit.

15.49 Statement of fact

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

15.50 Sum insured

The amount specified as the sum insured in the **schedule** and is **our** maximum liability for losses relating to the listed **section**.

15.51 Subsidiary company

15.51.1 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).

15.51.2 Any company as defined above (other than any company part of whose issued share capital is offered to the public or otherwise traded on a recognised exchange in the United States of America) which is acquired or created on or subsequent to the inception date of this **policy** and of which the turnover does not exceed ten per cent (10%) of **your turnover** as declared in **your** latest annual report and account.

15.51.3 Any other company (including any associated company) that **we** have given prior written consent to for its inclusion as a subsidiary company insured under this **policy**.

15.52 Territorial limits

The territory(ies) specified in the **schedule**.

15.53 Terrorism

An activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof; and appears to be intended to:

- a) intimidate or coerce a civilian population;
- b) disrupt any segment of the economy of a government de jure or de facto, state, or country;
- c) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
- d) affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

15.54 Turnover

The money paid or payable to **you** for goods sold and delivered and for services rendered in the course of the **business services**.

15.55 United Kingdom

Great Britain, Northern Ireland, the Channel Islands and the Isle of Man.

15.56 War

War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, nationalisation, requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

16 Complaints

16.1 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.

16.2 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

16.3 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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