

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 **us** (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 exclusions;
- b) How to claim;
- c) General terms and conditions;
- d) General definitions and interpretation; and
- e) Complaints.

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

1.4.1 **You** must make a fair presentation of **your** risk in proposing for, or proposing to vary, this **policy**, 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.

1.4.2 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 **you**, **your business services** or the risks insured if indemnity under this **policy** 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 Premium payment

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, exclusions 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; or
- c) an incident has happened which is likely to lead to a claim but is yet to be reported to us.

1.6.4 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 How to complain

Please refer to the **section** 'How to complain'.

2 Section – Cyber, data security and multimedia

2.1 Cyber and data security insuring clause

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

2.2 Multimedia insuring clause

We will indemnify **you** for any **media claim** first made against **you** during the **period of insurance** of which **you** first become aware during the **period of insurance**.

2.3 Cyber, data security and multimedia - costs and expenses

2.3.1 Following any event which is or may be the subject of indemnity under this section we will indemnify you for **defence costs**.

2.3.2 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.

2.4 Cyber, data security and multimedia extensions

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

2.4.1 Acquisitions and creations

- a) Where **you** create or acquire any company during 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) any acquired company has less than 100,000 **personally identifiable information**;
 - v) any acquired company has multi-factor authentication on all remote connections and administrative accounts;
 - vi) all software of any acquired company is still supported by the producer of the software and/or security updates are still being provided;
 - vii) **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
 - viii) 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 subsequent to inception of this **policy** 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 from the date of creation or acquisition provided that:
- i) the terms stated in Acquisitions and creations a)(i) to (viii) above also apply to such 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**.

2.4.2 Financial transfer indemnification

We will indemnify **you** for any theft of **your** money or property of which **you** first become aware during the **period of insurance** directly caused by a **breach of network security**.

2.4.3 Loss of or damage to documents

We will indemnify **you** for costs and expenses reasonably incurred in replacing or restoring **documents you** discover during the **period of insurance** 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 a **cyber risk**;
- b) **we** will only indemnify **you** for costs, charges and expenses of whatsoever nature incurred by **you** in replacing and/or restoring such **documents** which are supported by bills and/or accounts and which shall be subject to prior written approval by a competent person nominated by **us** with **your** consent; and
- c) **we** will only indemnify **you** for 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**.

2.4.4 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 **media content** by order of a court as a result of or in mitigation of a **media 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 **media content** would, if not rectified, result in damages equal to or in excess of the proposed indemnified costs and expenses; and

- c) satisfy **us** that that the costs and expenses incurred are necessary to successfully avoid (or reduce the loss in respect of) a **media claim**.

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

- i) payment recovered from others; 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.

2.4.5 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 a **breach of network security** 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 will indemnify **you** against

- i) Legal expenses incurred (with our prior written consent) to assess whether you are in breach of **data protection law**; and
- ii) **Data breach notification costs**

arising from an actual or suspected **cyber risk** of which you first become aware during the **period of insurance**.

4 Section – Information and communication asset rectification costs

4.1 Information and communication asset rectification costs

We will indemnify **you** for costs and expenses incurred in repairing, replacing or restoring **information and communication assets** discovered by **you** during the **period of insurance** to be lost, damaged or destroyed when the loss, damage or destruction was a result of a **breach of network security**.

Such indemnity shall be limited to the costs and expenses of whatsoever nature incurred by **you** with our prior written consent in relation to the replacement and/or restoration of such **information and communication assets**. Any claim for such costs and expenses shall be supported by invoices.

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 exclusion – ‘Fines and contractual penalties’ shall not apply.

- 5.1.2 **We** shall to the extent insurable by law pay on **your** behalf those amounts which **you** are legally obliged to pay as a result of a **breach of data protection law** directly arising from a **breach of privacy** of which you first become aware during the **period of insurance** for 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 **data protection regulator**.

5.2 Payment card industry fines

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

- 5.2.2 **We** shall to the extent insurable by law pay on **your** behalf any payment card industry fines, legal and investigation costs which directly result from a **breach of data protection law** arising from a **breach of privacy** of which **you** first become aware during the **period of insurance**.

- 5.2.3 **Our** liability under this clause 5.2 shall not exceed GBP 50,000.

6 Section – Public relations costs

6.1 Public relations costs

We agree that in the event of a **cyber risk** 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/or crisis management consultant to avert or mitigate any significant damage to any of your brands and business operations resulting from the **cyber risk**.

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

7 Section – Forensics costs

7.1 Forensics costs

We will pay all reasonable costs **you** incur with **our** prior written consent for a specialist consultant and/or data storage facility as a result of a **cyber risk** or a **cyber extortion threat** of which you first become aware during the **period of insurance** to:

- a) establish the cause and extent of the **cyber risk** or **cyber extortion threat**;
- b) assess **your** network security and recommend security improvement; and
- c) temporarily store your electronic data at a third-party host location, when **your information and communication assets** remain vulnerable to damage, destruction, alteration, corruption, copying, stealing or misuse.

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 will pay all reasonable costs **you** incur with **our** written consent for a maximum period of twelve (12) months for credit monitoring or identity theft services in order to comply with **data protection law** following a **breach of data protection law** of which you first become aware during the **period of insurance** provided that the provider of such services shall be chosen by **us** taking into account **your** reasonable request to consider a different provider.

9 Section – Cyber extortion

9.1 Cyber extortion

We will indemnify **you** to the extent insurable by law for **cyber extortion expenses** arising from a **cyber extortion threat** during the **period of insurance** when:

- a) **you** can demonstrate to **our** satisfaction 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**, at least one of **your directors** has agreed to the payment of the **ransom**;
- c) **we** have provided prior written 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’**.

10 Section – Cyber business interruption

10.1 Cyber business interruption

- 10.1.1 To the extent that this **section** – ‘Cyber business interruption’ applies, the General exclusion – ‘Trading loss and liabilities’ will not apply.
- 10.1.2 **We** will indemnify **you** for loss of **business income you** incur during the **period of reinstatement** directly as a result of a failure by **you** or a **service provider** to protect against a **breach of network security**.
- 10.1.3 **We** will not provide an indemnity for any losses incurred during the time excess period, commencing when the total or partial interruption, material degradation in service, or failure of **information and communication assets** began.
- 10.1.4 **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**.

11 Section – Social engineering fraud

11.1 Social engineering fraud

We will indemnify **you** during the **period of insurance** against the theft of **your** money, property, products, goods, services or other financial benefit, where such theft is as a direct result of a **social engineering fraud communication** during the **period of insurance** designed to impersonate **your** partners and/or **directors** or **employees**, or those of any of **your** suppliers or any other third parties.

12 General exclusions

Save to the extent that it is stated expressly that an exclusion will not apply, **we** shall have no liability to make payments under this **policy** directly or indirectly attributable to any:

12.1 Betterment

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

12.2 Bodily injury or property damage

- 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’.

12.3 Breach of legislation or regulation / anti-trust

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) or any subsequent amendments to that Act; or
- e) the Telephone Consumer Protection Act 1991 or any subsequent amendments to that Act; or
- f) any other law, regulation or statute relating to unsolicited communications, distributions, sending or transmitting of any communication via telephone or any other electronic or telecommunications device; or
- g) any law, regulation or statute relating to the wrongful collection, wrongful storage or wrongful use of biometric information.

12.4 Claim by an insured

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 entity in which **you** or any of **your directors or officers**, members principals or partners has an executive interest or responsibility or has a shareholding or other financial interest representing more than 15% of the issued share capital.

provided that this exclusion shall not apply to such **claims** by **employees** for **breach of privacy**.

12.5 Conduct

dishonest, fraudulent, deliberate or reckless act or omission of **you**. This exclusion shall not apply in respect of wilful misconduct of an **employee**.

12.6 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 exclusion shall not apply to fines under a merchant services agreement applicable to payment card fines.

12.7 Excess

12.7.1 any amount falling within the **excess** as stated in the **schedule**.

12.7.2 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.

12.7.3 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**.

12.7.4 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.

12.8 Existing claims or circumstances

occurrence:

- a) Prior to the **retroactive date**; or
- b) Notified to any other insurer(s) covering the same subject matter as this insurance for a preceding policy period; or

- c) Known to **you** prior to inception of this **policy** that may reasonably have been expected to result in a loss under this **policy**.

12.9 False advertising

false or deceptive trade practices arising from **media content**.

12.10 Financial services

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 penalties

- a) fines, penalties, liquidated damages or contractual penalties other than those that are covered under the 'Regulatory defence and penalty costs' **section**; or
- b) punitive, multiple or exemplary damages awarded by a court or tribunal or reflected in any settlement.

12.12 Franchisee

franchise or franchisee of the **insured** unless noted in the **schedule**. In addition, a **claim** originating from a franchise or franchisee of the **insured** shall not be covered under this **policy**.

12.13 Gaming, gambling or lotteries

use or provision of any gaming, gambling or lottery except when such services are identified as **business services**.

12.14 Government intervention

government, regulatory, licensing or commission action or investigation. However, this exclusion shall not apply to the 'Regulatory defence and penalty costs' **section**.

12.15 Inaccurate pricing

inaccurate, inadequate or incomplete description or pricing of goods, products or services.

12.16 Insolvency of the insured

insolvency event.

12.17 Legal advice

failure by you to adhere to legal advice with regard to clearances or dissemination of **media content**.

12.18 Liability arising out of employment

violation relating to any individual's actual or prospective employment by **you**.

However, this exclusion will not apply to the extent that **you** would be liable to such **employees** other than in their capacity as **employees** or a **breach of privacy** or **breach of data protection law** directly affecting **employees**.

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

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

- a) acting in that capacity; 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 American jurisdiction

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

12.23 Nuclear risks and ionising radiation

- 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 Ordinary payroll costs

ordinary salary costs incurred within **your** normal working hours. However, this exclusion shall not apply to the 'Cyber business interruption' **section**.

12.25 Patents / trade secrets

infringement of any patent or unauthorised use of trade secrets.

12.26 Pensions

insured acting as a trustee, fiduciary or administrator of the **insured's** own pension, profit sharing or employee benefits programme, including any actual or alleged breach or violation of the Employee Retirement Income Security Act of 1974 (ERISA) (USA) the Pensions Acts of 1994 and 1995 (UK) or any successor, amending or subordinate legislation of either, or any similar or equivalent law or regulation in any other jurisdiction.

12.27 Products liability

goods or products (being tangible property or merchandise) sold, supplied, repaired, altered, treated, manufactured, installed or maintained by **you** or on **your** behalf.

12.28 Pollution, Asbestos or electromagnetic fields

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, 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.

12.29 Professional services

claim or loss arising out of or in connection with any act, error or omission, or any breach of contract in rendering or failure to render **professional services**.

12.30 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.

12.31 Return of fees or commissions

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

12.32 Sanction limitation

claim or 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 of companies to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

12.33 Territorial limit

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

12.34 Theft

claim or loss sustained by **you** or a third party by the transfer of money or securities (or equivalent thereof) other than where coverage is provided under the 'Financial transfer indemnification' sub-**section** or the 'Social engineering fraud' **section**.

12.35 Trading loss and liabilities

- a) **your** lost profit, mark-up or tax liability or **your** 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.

12.36 Unlicensed software

use by **you** 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.

12.37 Unsupported systems

claim or loss caused by a **cyber risk** to software which is no longer supported by the producer of the software and/or where security updates are no longer being provided.

12.38 Utility service provider

failure disturbance, interruption or outage of: internet access or telecommunications services, including Domain Name System (DNS), Top-Level Domain or DNS Root Zone Service, telecommunications infrastructure or internet infrastructure, electricity, satellite or utilities. This exclusion will not apply if such services are under **your** direct operational control.

12.39 War and terrorism

12.39.1 **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**.

12.39.2 Any unlawful act of a third party resulting in a **breach of network security** shall not be regarded as an act of **terrorism**.

12.40 Wear and tear

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

13 How to claim

13.1 Cyber risk – immediate steps to be taken

Immediately upon discovery of an actual or alleged **cyber risk**, **you** should give notice to the **cyber and data security representative** by telephone on +44 (0)207 523 5333.

The **cyber and data security representative** can provide advice and assist you in the investigation of the actual or alleged **cyber risk**. If the actual or alleged **cyber risk** which you notify to the **cyber and data security representative** is following investigation determined to be covered by any **section** of this **policy**, we shall indemnify you for any reasonable costs you incur instructing the **cyber and data security representative**. If the actual or alleged **cyber risk** which you notify is not covered by any **section** of this **policy**, we shall not indemnify you for the costs you incur instructing the **cyber and data security representative** and you will have to bear those costs.

For the avoidance of doubt, notification to the **cyber and data security representative** does not satisfy your separate obligation under clause 13.2 below to notify **us** of any potential claim under this **policy**.

13.2 Notification of a potential claim under this policy

It is a condition precedent to **our** liability that notice shall be given to **us** after discovery by **you** of any **claim** or **circumstance** or occurrence which may give rise to a claim under this **policy** as soon as practicable within the **period of insurance** or, if applicable, the extended reporting period.

Such notification should be made via email to CoreFSM@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.

13.2.1 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

You must before and after notification under this **policy**:

- 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, unless expressly provided to the contrary;
- c) 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**;
- d) –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 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 subject to any applicable **sub-limit**.

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**.

13.5 Interrelated claims

Two or more claims under this policy arising from the same originating cause shall be deemed to constitute a single claim notwithstanding that they might involve different claimants, insureds and causes of action. Only one retention and any applicable limit of indemnity/sub-limit shall apply to that single claim. All such claims shall be deemed to have been first made when the first of them was notified to us.

13.6 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.

13.7 Our rights

- 13.7.1 **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**.

14 General terms and conditions

14.1 Assignment

We shall not be bound by any assignment of interest under this **policy** unless **we** have given **our** prior written consent.

14.2 Cancellation

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

- i) By **you** giving written notice:
 - i) within fourteen (14) days from the inception date of the **policy** to **your** broker or to **us** quoting your policy number. **You** have the right to cancel the **policy** free of charge and to receive a full refund of premium under this **policy**. If we pay any claim, in whole or in part, then no refund of premium will be allowed; or
 - ii) after fourteen (14) days from the inception date of the **policy** to **your** broker 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. If **you** cancel after fourteen (14) days from the inception date of the **policy**, there will be an additional charge, as stated in the **schedule**, to cover the administrative cost of providing the insurance; or
- ii) by **us** giving **you** ten (10) days' written notice to **your** address in the **schedule** if **you** do not pay any premium or premium instalment (including any applicable taxes/levies payable in addition to the premium) to **us** or our broker on or before the relevant payment date in the **schedule**. This will have the effect of cancelling all cover from the inception of the **policy**. However, if **we** or the broker received the full payment due before ten (10) days have elapsed, the **policy** will continue in force

14.3 Confidentiality

We shall treat as confidential all information provided to **us** by **you** in connection with this **policy** and will not, without **your** prior consent, disclose any such information to any third party but **we** shall, without **your** consent, be entitled to disclose any confidential information to:

- i) any director, officer, employee, agent, reinsurer or adviser of **us** or **our** group companies in connection with this **policy**;

- ii) any person in order to comply with any legal or regulatory requirement; and
- iii) as required by any court, mediator or arbitrator.

We will not be required to treat as confidential any information provided to **us** by **you** if that information:

- i) is in the public domain, other than by means of **us** having disclosed it; or
- ii) was in **our** possession prior to it being provided by **you**.

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.

14.4 Contracts (Rights of Third Parties) Act 1999

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

14.5 Dispute resolution – mediation

Without prejudice to the 'Governing law and arbitration' clause of this **policy**, 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 arbitration in accordance with the 'Governing law and arbitration' clause of this **policy**.

14.6 Disputed defence or appeal

If any dispute arises between **you** and **us** as to whether a claim 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.

14.7 Document management

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.

14.8 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 **policy**.

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

14.10 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 $X = (\text{premium actually charged/reduced total premium}) \times 100$.

14.11 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.

14.12 Governing law and arbitration

This **policy** shall be governed by and construed in accordance with the laws of England and Wales.

All matters in difference between the parties arising under, out of or in connection with this policy, including formation and validity, and whether arising during or after the **period of insurance**, shall be referred to an arbitration tribunal. The seat and place of arbitration shall be London. The arbitration shall be conducted in accordance with the latest UK ARIAS Rules published at the time that arbitration is commenced.

Unless the parties agree to appoint a sole arbitrator within fourteen (14) days of one receiving a written request from the other for arbitration, the claimant shall appoint their arbitrator and give written notice to the respondent. Within fourteen (14) days of receiving such notice the respondent shall appoint their arbitrator and give written notice to the claimant.

If the respondent refuses to, or fails to, appoint an arbitrator within fourteen (14) days of receiving written notice of the appointment of the claimant's arbitrator, the claimant may give notice in writing to the respondent that they propose to appoint their arbitrator to act as the sole arbitrator. If the respondent does not within seven (7) clear days of that notice being given make the required appointment and notify the claimant that he has done so, the claimant may appoint their arbitrator as sole arbitrator whose award shall be binding on both parties as if they had been so appointed by agreement.

Where two arbitrators have been appointed by the claimant and the respondent, those arbitrators shall appoint a third arbitrator. Should they fail to appoint such a third arbitrator within twenty-eight (28) days of the appointment of the respondent's arbitrator, either of them or either of the parties may apply to the appointor for the appointment of the third arbitrator. The appointor shall be the Chairman for the time being of ARIAS (UK) or if they are unavailable or it is inappropriate for them to act for any reason, such person as may be nominated by the Committee of ARIAS (UK). If for any reason such persons decline or are unable to act, then the appointor shall be the Judge of the appropriate Courts having jurisdiction at the place of arbitration.

The three arbitrators shall decide by majority. If no majority can be reached the verdict of the third arbitrator shall prevail. The third arbitrator shall also act as chairman of the tribunal.

Unless the parties otherwise agree the arbitration tribunal shall consist of persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance as persons engaged in the industry itself or as lawyers or other professional advisers.

14.13 Inspection and audit

We, or **our** representative will be permitted but not obligated to inspect **your** property and operations with reasonable notice. Such inspections do not warrant that such property or operations are safe.

14.14 Insurance Act 2015

unless expressly stated in an endorsement to this **policy**, nothing in this **policy** is intended to vary the provisions of the Insurance Act 2015.

14.15 Limits of indemnity and retention

The amount specified as such in the **schedule** shall be our maximum aggregate **limit of indemnity** under this **policy**.

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 **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;

- 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;
- v) the **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;
- 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) if applicable, an extended reporting period does not reinstate or otherwise affect the **limit of indemnity**;
- ix) 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**.

14.16 Other insurance

Only in the event that a covered loss, damages or claims, perils, definitions, and/or conditions set forth herein are broader in meaning or scope under this **policy** than those of **your** valid and collectible insurance, the insurance coverage offered in this **policy** will become primary insurance.

14.17 Privacy Notice

Any personal **data** provided to **us** will be processed in compliance with all applicable laws and regulations and in accordance with the privacy notice which can be found at: <https://qbeeurope.com/privacy-policy/>

Alternatively **you** may contact **our** Data Protection Officer to request a copy of the full privacy notice by email: dpo@uk.qbe.com or by writing to the: Data Protection Officer, QBE European Operations, 30 Fenchurch Street, London EC3M 3BD.

14.18 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.

14.19 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 all **insureds** covered under the **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**.

14.20 Risk minimisation

You will take all reasonable steps at **your** own expense to prevent or minimise a loss or **claim** covered by this **policy**. 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**.

14.21 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**.

14.22 Subrogation

If **we** make any payment under this **policy**, **we** shall be subrogated to all of **your** potential or actual rights of recovery. **You** shall do all things that **we** may require to secure such rights of recovery and shall provide any assistance and cooperation to **us** as **we** may reasonably require.

Any amounts recovered will be payable as follows: any interested persons (including **you**) who have paid an amount over and above any payment under this **policy** will first be reimbursed up to the amount paid by them; **we** are then to be reimbursed out of any balance remaining up to the amount paid under this **policy**; any residual amount is to be paid to the interested persons (including **you**) to whom cover provided by this **policy** is in excess.

Expenses incurred in the recovery of any such amounts will be apportioned between the interested parties concerned in the ratio of their respective recoveries as finally settled.

14.23 Subscribing insurer

Our obligations under this **policy** are severable and not joint and are limited solely to the extent of our individual subscription. **We** are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

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 Breach of network security

- a) breach of the security of **information and communication assets** through:
 - i) failure to protect against or prevent the transmission of a computer virus;
 - ii) the unauthorised access of **information and communication assets**;
- b) a denial-of-service attack on **information and communication assets**;
- c) the prevention of access to **information and communication assets** caused by a malicious electronic act; or
- d) unauthorised use, alteration or deletion of data on **information and communication assets**.

15.3 Breach of data protection law

failure by **you** or a **service provider** to comply with **data protection law**.

15.4 Breach of privacy

a breach of confidentiality in relation to **personally identifiable information** or a third party's corporate confidential information by **you** in breach of a duty owed by **you**.

15.5 Business income

the amount of **your** net profit if any before taxes which would have been earned by **you** 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 increased cost of working incurred by **you** for the sole purpose of avoiding or diminishing the loss of net profit; and
- c) any costs savings which **you** can reasonably achieve.

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.

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

- i) damaged or undamaged **information and communication assets**
- ii) available stock, merchandise or data; or
- iii) substitute facilities, equipment or personnel.

15.6 Business services

Your business as specified in the **schedule**.

15.7 Circumstance

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

15.8 Claim

- a) the receipt by **you** of any written notice of demand for compensation made by a third party against **you**;
- b) any notice of intention in writing to commence legal proceedings against **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.

15.9 Contamination

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

15.10 Cyber and data security representative

Clyde & Co, whose contact details are:

+44 (0)207 523 5333 / CyberResponseLine.UK@clydeco.com

15.11 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**.

15.12 Cyber extortion threat

A threat from a **hacker** to bring about a **breach of network security** or **breach of privacy** against your **information and communication assets**.

15.13 Cyber risk

- a) **breach of network security**
- b) **breach of privacy**

15.14 Data protection law

All applicable data protection and privacy legislation, regulations and guidance in any country, province, state, territory or jurisdiction which govern the use, confidentiality, security and protection of **personally identifiable information** and any guidance or codes of practice issued by any applicable **data protection regulator** or governmental entity from time to time including Regulation (EU) 2016/679 (the "**General Data Protection Regulation**" or the "**GDPR**") and Data Protection Act 2018 (and, following the UK's exit from the European Union,

all legislation enacted in the UK in respect of the protection of personal data) and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and any guidance or codes of practice issued by any **data protection regulator** from time to time (all as amended, updated or re-enacted from time to time).

15.15 Data breach notification costs

Those reasonable and necessary expenses incurred by **you** or which **you** become legally obliged to pay for the provision of notifications to comply with **data protection law** or voluntary notification if recommended by a law firm appointed under the section 'Data breach notification costs' following a **breach of data protection law** 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; and
- c) the costs of call centre services to respond to enquiries following a notification communication.

15.16 Data protection regulator

The Information Commissioner's Office, the Article 29 Working Party and the European Data Protection Board and any other supervisory authority with jurisdiction over **you**, and in each case any successor body from time to time.

15.17 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; or
- c) 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 **directors or officers**, members, principals or partners – GBP500;
 - ii) any **employee** – GBP250;
 - iii) any other relevant party – GBP200 (subject to **our** prior agreement).

Defence costs do not include your own internal costs and expenses, the salary or expenses of your **employee, director or officer**, member, principal or partner, or any adjusters' fees, for which we will not provide any indemnity.

15.18 Director or officer

A director or officer of the company.

15.19 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.

15.20 Employee

Any person including trainees and freelance consultants acting under a contract of service with **you** in respect of the conduct of **business services** by **you**. **Employee** does not include any of **your** principals, 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

A third party who gains unauthorised access to, or makes unauthorised use of, **information and communication assets** by circumventing electronically or otherwise **your** security system in place to protect against such unauthorised access for **ransom**.

15.23 Information and communication assets

Your computer and telecommunication system software and hardware, including but not limited to **your** email system, encrypted electronic signature, encrypted electronic certificate, website, intranet, network, internet-connected telephone system, program or any other data held electronically, interconnecting wiring, fixed disks, telecommunications equipment and all components thereof used for storage, processing or communication of electronically processed 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 **you** or any **subsidiary company**;
- b) a petition being presented, a meeting being convened or an effective resolution being passed otherwise than with **our** prior written consent as part of a solvent reconstruction or amalgamation for the winding up of **you** 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 **you** or any **subsidiary company**;
- d) **you** or any **subsidiary company** suspending or threatening to suspend payment of its debts as they fall due or being, or likely to become, unable to pay its debts, whether within the meaning of Section 123 Insolvency Act 1986 or otherwise;
- e) **your directors or officers**, partners, principals or members or those of 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) **you** 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 **you** 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** that are in existence at the inception date of the insurance and have been declared to us or where applicable any company created or acquired by **you** as set out in the 'Acquisition and creations' clause of the 'Cyber, data security and multimedia' **section** until such time as they may be sold or otherwise disposed of (but not excluding any liabilities incurred prior to disposal), and
- b) **your** partners and/or **directors or officers** or members or **employees** during the **period of insurance** or thereafter;
- c) **your** former partners and/or former directors and/or former members and/or former **employees**;
- d) 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 Insurer/we/us/our

The party specified as insurer in the **schedule**.

15.27 Jurisdiction

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

15.28 Limit of indemnity/Sub-limit

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

15.29 Media claim

A **claim** against you for defamation, breach of copyright, invasion of privacy or misappropriation of ideas which arises from **your media content**.

15.30 Media content

Content on your website, intranet or social media pages. Media content does not include any product packaging or labelling, design or ideas in relation to tangible products or property.

15.31 North America

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

15.32 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.

15.33 Period of insurance

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

15.34 Period of reinstatement

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

- a) the date on which the **business income** loss ends (or could have ended, had **you** acted reasonably expeditiously to restore the business), up to a maximum of 30 days after the time when we are satisfied **information and communication assets** are repaired, restored and/or replaced (or could have been) 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) the date ninety (90) days thereafter;
- whichever is the sooner.

15.35 Personally identifiable information

Any information from which an individual may be uniquely and reliably, either directly or indirectly, identified or contacted and to the extent more broadly defined, has the meaning given to 'Personal Data' under **data protection law**.

15.36 Policy

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

15.37 Pollution

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

15.38 Professional services

Services performed by or on behalf of **you**.

15.39 Property Damage

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

15.40 Proposal

Any information or materials submitted to **us** by **you** or on **your** behalf prior to inception, variation or renewal of this **policy**.

15.41 Ransom

Your money, products, goods, services, property, or other financial benefit.

15.42 Regulatory compensatory award

A sum of money which **you** are legally obliged to pay as an award or fund for those affected following a **data protection regulator's** investigation of a **breach of data protection law**. This does not include any criminal penalty or fine.

15.43 Retroactive date

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

15.44 Schedule

The schedule to this **policy**.

15.45 Section

A section of this **policy**.

15.46 Service provider

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

15.47 Social engineering fraud communication

A communication designed to mislead an **employee** into transferring **your** 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.

15.48 Subsidiary company

15.48.1 Any entity in respect of which **you** (either directly or indirectly through one or more of **your** subsidiary companies):

- a) control the right to vote for the election or removal of such entity's directors; or
- b) control more than fifty percent (50%) of the voting rights; or
- c) own more than fifty percent (50%) of the issued and outstanding share capital (regardless of class of share).

15.48.2 Any such entity shall only be covered by this **policy** (subject to the 'Acquisition and creations' clause of the 'Cyber, data security and multimedia' **section**) for that part of the **period of insurance** when it was a subsidiary.

15.49 Territorial limits

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

15.50 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.

15.51 United Kingdom

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

15.52 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 How to Complain

16.1 Complaints to QBE

You can complain about this **policy** by contacting **your** broker or where **your policy** is insured by QBE Europe SA/NV, QBE UK Limited or where **your** insurer is or includes a Lloyd's syndicate write to:

Customer Relations, QBE European Operations, 30 Fenchurch Street, London EC3M 3BD

Email: CustomerRelations@uk.qbe.com

Telephone: 020 7105 5988

16.2 Financial Services Compensation Scheme (FSCS)

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

16.3 The UK Financial Ombudsman Service (UK FOS)

If **you** feel that **your** complaint has not been satisfactorily resolved, **you** may be eligible to contact the UK FOS to review the complaint. Information about the eligibility criteria is available on the UK FOS website: <http://www.financial-ombudsman.org.uk/consumers/how-to-complain>

You can contact the UK FOS via its website, or write to Exchange Tower, London E14 9SR, Tel: +44 (0)800 023 4567.

QBE European Operations



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