

QBE Surveyors'

Surveyors'

Professional Liability Combined Insurance Policy



QBE

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1 Our agreement in general

1.1 This agreement

This **policy** is between **you** and **us** as declared in the **schedule**. The **statement of fact**, this document, its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

Words in bold type face used in this **policy** document, other than in the headings, such as **you** above, have specific meanings attached to them as set out in the General definitions and interpretation section of this document.

1.2 Policy period and premium

1.2.1 **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**.

1.2.2 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.

1.2.3 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.

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

1.3 Basis for the policy

We rely upon the information set out in the **statement of fact** made by you or on **your** behalf in assessing the terms for **your** insurance. It shall be a condition precedent of the **policy** that all the information in the **statement of fact** is true so far as it is within **your** knowledge or could, with reasonable diligence, have been ascertained.

In the event of a breach of any provision of this clause, and without prejudice to any of **our** other rights, **we** may reject or reduce claims connected with the breach and continue the **policy** on such terms as **we** may determine.

1.4 Security of premises

The **policy** contains a minimum security protections condition. Please refer to Minimum standards of security clause under the General condition section for full details. It is important that **you** do not alter door or window or other security devices unless allowed for within this condition.

1.5 Claims procedure

In the event of an incident resulting in a claim or one that may result in a claim, please read the claims procedure to this **policy**.

For claims under all **sections** except the Legal expenses section please either:

1.5.1 contact your insurance broker; or

1.5.2 For claims under **section A - F** please contact QBE Claims Plantation Place, 30 Fenchurch Street, London, EC3M 3BD
Email details to smepiclaims@uk.qbe.com

1.5.3 For claims under **section G - L** please contact QBE Claims
Acclaim House, Central Park, New Lane, Leeds, LS11 5UF; and/or
Telephone **us** on **0844 7369640**; or
Email details to SMNewclaims@uk.qbe.com

For claims under **section M** please contact **DAS**:

DAS House, Quay Side, Temple Back, Bristol BS1 6NH

Telephone **us** on **0117 9330618**

Email details to newclaims@das.co.uk or as set out in the Helpline section or the Claims notification section.

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

1.6 **Signature**

1.6.1 In evidence of **our** intention to be bound by this insurance, **we** print the signature of **our** Chief Underwriting Officer - Property, Casualty and Motor.

A handwritten signature in black ink, appearing to read 'R. Ball', is written over a horizontal line. The signature is stylized and cursive.

2 Helplines

DAS provide these services 24 hours a day, seven days a week during the **period of insurance**. However, **DAS** may need to arrange to call **you** back depending on the enquiry. To help **DAS** check and improve their service standards, **DAS** record all inbound and outbound calls, except those to the counselling service.

DAS will not accept responsibility if the Helpline Services fail for reasons they cannot control. Please do not telephone to report a general insurance claim.

2.1.1 Legal advice service Call **0844 893 0859**

DAS will give **you** confidential legal advice over the telephone on any commercial legal problem affecting the **business**, under the laws of the member countries of the European Union, the Isle of Man, the Channel Islands, Switzerland and Norway.

Specialist advice is provided 9am - 5pm, Monday to Friday, excluding public and bank holidays. If calls are made outside these times, DAS will call you back.

2.1.2 Tax advice service Call **0844 893 0859**

DAS will give **you** confidential advice over the telephone on any tax matters affecting the **business**, under the laws of the **United Kingdom**.

Tax advice is provided by tax advisors 9am – 5pm, Monday to Friday, excluding public and bank holidays. If calls are made outside these times, DAS will call you back.

2.1.3 Employment manual

The **DAS** Employment Manual offers comprehensive, up to date guidance on rapidly changing employment law. To view it, please visit their website at www.das.co.uk. From the Home Page click on the Employment Manual icon. All the sections of this web-based document can be printed off for **your** own use. Contact **DAS** at employmentmanual@das.co.uk with **your** email address, quoting **your policy** number and they will contact **you** by email to inform **you** of future updates to the information.

2.1.4 DASbusinesslaw

Using www.dasbusinesslaw.co.uk **you** can create ready-to-sign contracts, agreements and letters in minutes. Developed by solicitors and tailored by **you** using **DAS'** smart document builders. **You** can also buy legal documents from the site, ranging from simple debt recovery letters to employment contracts.

The service also provides useful tools, articles and information on matters such as new legislation, employment issues, property law and taxation all regularly updated by legal experts to help **you** keep **your business** one step ahead.

To access DASbusinesslaw, **you** will need to visit www.dasbusinesslaw.co.uk and register using the voucher code **DAS472301** and Policy Number **TS5/6695190**. When prompted to input **your** company name, please insert the prefix **QBE** followed by the name of **your business**. If **you** experience any problems accessing the service, please email the problem to businesslaw@das.co.uk, quoting **your** policy number.

3 Section A - Professional liability

3.1 Professional liability cover

3.1.1 Civil liability

We agree to indemnify **you** for liability imposed by law to pay compensatory damages from any **claim** first made against **you** and arising out of **your** or **your consultants** performance of **business services**, during the **period of insurance**, and where the **claim** arises out of any actual or alleged:

- a) breach of professional duty, negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation;
- b) misuse of any information which is either confidential or subject to statutory restrictions on its use and for the loss, damage, distortion, erasure or destruction of any documents, digitised data, microcode or information stored in written, machine-readable or any other form;
- c) defamation or other tort related to disparagement of character, reputation or feelings of any person or organisation, including libel, slander, product disparagement, trade libel, infliction of emotional distress, malicious falsehood, outrage or outrageous conduct;
- d) any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;
- e) infringement of intellectual property rights including but not limited to copyright, design (including in respect of semiconductor topographies), title, slogan, trademark, trade name, trade dress, service mark, service name, domain name or metatag, breach of moral rights, passing off, plagiarism, 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 **business services**;
- f) civil liability not included above.

3.1.2 Limit of Indemnity

Our liability under this **section** in respect of any one **claim** shall not exceed the amount stated as the **limit of indemnity** in the **schedule** exclusive of **defence costs** that will be payable in addition to the **limit of indemnity** unless such **defence costs** are expressly stated in any clause as included within the **limit of indemnity**.

Where provided, the **limit of indemnity** in respect of **North America** will always be in the aggregate inclusive of **defence costs** and the limit granted is deemed to be part of and not in addition to the overall **policy limit of indemnity** specified in the **schedule**.

3.1.3 Arbitration and adjudication

The indemnity provided by the 'Civil liability' clause includes liability which **you** may incur in respect of any **claim** (including claimants' legal costs and expenses) first made against **you** during the **period of insurance**, as a result of:

- a) any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts, as contained in the Local Democracy, Economic Development and Construction Act 2009 (formerly Housing Grants, Construction and Regeneration Act 1996) or an adjudication clause or rules contained in a contract; or
- b) any award by an arbitrator or tribunal of arbitrators (whether under the Surveyors and Valuers Arbitration Scheme 1998 or otherwise).

3.2 Additional professional liability costs and expenses

3.2.1 Court attendance compensation

We will pay compensation to **you**, with **our** prior written consent in the event that 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 against **you** for which cover is afforded under this **section**, at the following rates for each day or part thereof on which attendance is required:

- a) any principal partner, **member** or director of the **insured** £500;
- b) any **employee** £250;
- c) other relevant party up to £200.

Provided that for all claims under this Court attendance compensation clause **our** liability shall not exceed the sub-limit of indemnity of £10,000 in the aggregate for the **period of insurance**.

3.2.2 Defence costs

Following any event which is or may be the subject of indemnity under this **section we** agree to pay, with **our** prior written consent, **defence costs** provided that if the **limit of indemnity** under this **section** 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.

3.2.3 Statutory liabilities

We agree to indemnify **you** for up to eighty percent (80%) of any reasonable costs and expenses incurred with the **our** prior written consent, for the defence of any proceedings first brought against **you** and notified to **us** during the **period of insurance**, under the:

- a) Property Misdescriptions Act 1991; or
- b) Estate Agents Act 1979; or
- c) the Health and Safety at Work etc Act 1974; or
- d) the Health and Safety at Work (Northern Ireland) Order 1978; or
- e) the Construction (Design and Management) Regulations 2007; or
- f) The Corporate Manslaughter and Corporate Homicide Act 2007 and/or
- g) The Bribery Act 2010; and/or
- h) The Data Protection Act 1998; and/or
- i) similar or successor legislation to that detailed in a) to h) above;

provided that:

- i) such indemnity is only payable where in **our** reasonable opinion, defending such proceedings could protect **you** against any **claim** or potential **claim** arising from the **business services** undertaken by **you**; and
- ii) **our** liability to provide indemnity under this clause shall not exceed the sub-limit of indemnity of £100,000, which shall be the amount inclusive of all **defence**

costs, that is the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

3.2.4 Legal representation costs

We agree to indemnify you for up to eighty percent (80%) of any reasonable costs and expenses:

- a) which are incurred by **you** with the **our** prior written consent, for representation at properly constituted hearings, tribunals or proceedings arising out of any;
 - i) **claim** first made; and/or
 - ii) **circumstance** which the **insured** shall first notify;

during the **period of insurance**, in respect of the conduct of the **your business services**, which may be or may become the subject of indemnity under this **policy**, provided that:

- a) such costs and expenses are not indemnified as **defence costs**, pursuant to the 'Court attendance compensation' above; and
- b) **our** liability to provide indemnity under this clause shall not exceed the sub-limit of **indemnity** of £10,000, which shall be the amount inclusive of all **defence costs**, that is the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

3.3 Professional liability extensions

3.3.1 Awards by ombudsmen

Notwithstanding the 'Ombudsman's' exclusion **we** agree to indemnify **you** against any award made by an ombudsman in respect of any case accepted by the ombudsman for review in his position as ombudsman under any recognised scheme where the **claim**:

- a) is first made against **you**; and/or
- b) arises out of any **circumstance**, which **you** shall first notify, during the **period of insurance**.

Provided that:

- c) the ombudsman has operated within any terms of reference or rules applicable to their appointment;
- d) **our** liability shall not exceed the sub-limit of **indemnity** of £250,000 any one **claim** and the aggregate for the **period of insurance**;
- e) where an ombudsman makes an award which is rejected by the claimant who then pursues the matter through the courts, both the complaint to the ombudsman and all subsequent court proceedings shall be treated as a single **claim** made at the date of the first **claim** against **you**.

3.3.2 Cyber liability

The indemnity provided by 'Civil liability' clause includes liability which **you** may incur in respect of any **claim** (including claimants' legal costs and expenses) first made against **you** during the **period of insurance**, as a result of **cyber liability**, provided that **our** liability to provide indemnity under this clause shall not exceed the sub-limit of **indemnity** of £250,000, which shall be the amount inclusive of all **defence costs**, that is the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

3.3.3 Dishonesty of employees

We will indemnify you for liability as result of any **claim** against **you** during the **period of insurance** when alleged in conjunction with a **claim** covered under the 'Civil liability' clause arising directly or indirectly from any dishonest, fraudulent, malicious or criminal act or omission of any of **your employees** excluding partners, directors or principals, but the insurance by this **policy** excludes any indemnity to **your employees** committing or colluding in the dishonest act, fraud, malicious or illegal act or omission.

3.3.4 Fraudulent use of information

We will indemnify **you** against all sums which you shall become legally liable to pay above the **excess** as a result of any **claim** against **you** during the **period of insurance** as a result of a third party's good faith reliance on a **hackers** fraudulent use of **your information and communication assets** where there was a clear intention to cause **you** loss or obtain a personal gain for the **hacker**.

Our maximum liability shall not exceed the sub-limit of indemnity of £100,000 which amount is the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

3.3.5 Public relations and crisis management services

Following a **claim** under the 'Civil liability' clause, **we** will pay all reasonable costs which **you** incur with **our** prior written consent for a public relations and/or crisis management consultant to avert or mitigate any material damage to any of **your** brands and business operations; provided that:

- a) **our** maximum liability shall not exceed the sub-limit of indemnity of £50,000 which amount is the maximum payable any one **claim** and in the aggregate during the **period of insurance**;
- b) the public relations and/or crisis management consultants shall be chosen by **us** who shall take into account the nature of the **claim** or loss and the cost and quality of the services that they can deliver, unless **you** have reasonable cause to request a different public relations consultancy and **we** agree to your request.

3.4 Professional liability limitations and exclusions

This **section** excludes and does not cover:

3.4.1 Aircraft, watercraft, vehicles or buildings

any **claim**, liability, loss or **defence costs** arising directly or indirectly from:

the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or mechanically propelled vehicle;

the ownership or possession by or on **your** behalf of any buildings, structures, premises, land or property (mobile or immobile) or that part of any building **you** lease, occupy or rented.

3.4.2 Arbitration and adjudication

any **claim**, liability, loss or **defence costs** arising from:

- a) a decision made against **you** by an adjudicator who was not independent of the parties to the dispute; or
- b) a **claim** arising out of or related to any adjudication arising from an adjudication clause in a contract, which contains timetable provisions for adjudication which are more onerous to **you** than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996; or

- c) any adjudication where **you** serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract without **our** prior written consent, except that this exclusion will not apply where in **your** reasonable opinion, service of such a notice will not give rise to a **claim**; or
- d) any arbitration award (whether made under the Surveyors' and Valuers' Arbitration Scheme 1998 or otherwise) made in respect of any **claim** or counterclaim where the seat of the arbitration was located outside England, Wales, Scotland or Northern Ireland, unless that seat was agreed to by **us**;

unless such liability attaches by way of the indemnity granted by the 'Arbitration and adjudication' extension.

3.4.3 **Asbestos**

any **claim**, liability, loss or **defence costs** arising directly or indirectly from the presence or release or possible presence or possible release of asbestos or asbestos containing materials in whatever form or quantity. Subject to the provisos below, this exclusion shall not apply to any **claim** caused by a negligent act, negligent error or negligent omission in the conduct of the practice, provided always that:

such **claim** is:

- a) first made against **you**; and/or
- b) arises out of any **circumstance** which **you** shall first notify;
- c) during the **period of insurance**.

we shall not be liable for any **claim**:

- i) directly or indirectly resulting from **asbestos surveys** carried out by the **insured**; or
- ii) arising out of or in any way involving any **bodily injury** or fear of suffering **bodily injury**.

our liability shall not exceed the sub-limit of indemnity of £250,000 for each **claim** and the aggregate inclusive of **defence costs** for the **period of insurance**;

3.4.4 **Associated company**

any **claim**, liability, loss or **defence costs** brought or maintained by or on behalf of:

- a) **you** or any **parent** of **yours** or any **subsidiary**; or
- b) any firm, partnership or entity in which **you** or any director or partner of **yours** has a financial or executive interest;
- c) any person who, at the time of the act, error or omission giving rise to the **claim**, is a family member unless such a person is acting without any prior or indirect solicitation or co-operation of **yours** (family member means any spouse, domestic partner, parent, parent of a spouse or domestic partner, sibling or child);

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

3.4.5 **Assumed duty or obligation**

any **claim**, liability, loss or **defence costs** directly or indirectly arising out of, or in any way involving any liability, duty or obligation incurred or assumed by **you** which is not incurred or assumed in the normal conduct of **your business services**.

3.4.6 **Bodily injury and property damage**

any **claim**, liability, loss or **defence costs** directly or indirectly arising out of, or in any way involving **bodily injury** and/or **property damage**:

- a) to or of any **employee** whilst in the course of their employment for or on **your** behalf; and
- b) **bodily injury** to any person, other than an **employee**, or damage to or destruction of any property (not otherwise insured under 'Civil liability b) and c)' above including loss of use thereof, provided that this exclusion shall not apply to **claims** arising from breach of professional duty, negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation in the conduct of **your business services**.

3.4.7 **Computer virus**

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from any **computer virus**.

3.4.8 **Contractual liability**

any **claim**, liability, loss or **defence costs** directly or indirectly arising from:

- a) any contractual liability incurred by **you** in the conduct of **your business services** such as:
 - i) **your** acceptance of an obligation, or the guarantee of fitness for purpose where this appears as an express term; or
 - ii) any express guarantee given by **you**, including any relating to the period of a project; or
 - iii) any express penalty contained in a contract between **you** and a third party; or
 - iv) any express acceptance by **you** of liability for liquidated damages.
- b) any liability that arises in consequence of any assignment of a **collateral warranty or duty of care agreement** to more than one party, except in the case of a **collateral warranty or duty of care agreement** given to a financier or funding party (not a purchaser or tenant) where a total of two assignments is permissible. This sub-clause is only applicable to contractual liabilities entered into on or after 1 October 2001.

but this clause shall not apply:

- c) if liability would have attached to **you** in the absence of any such express agreement; or
- d) if **we** has expressly approved the contractual terms giving rise to the said liability; or
- e) in the case of a **collateral warranty or duty of care agreement** where the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.

3.4.9 **Excess**

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

3.4.10 **Existing claims**

any **claim**:

- a) made, threatened or intimated against **you** prior to the **period of insurance**;

- b) liability, loss or **defence costs** directly or indirectly arising out of, or in any way involving any fact or **circumstance**:
 - i) of which written notice has been given under any previous policy (whether insured by **us** or not); or
 - ii) of which **you** first became aware prior to the **period of insurance** and which **you** knew or ought reasonably to have known had the potential to give rise to a **claim** or loss.

3.4.11 **Financial services**

any **claim**, liability, loss or **defence costs** arising out of any regulated activities as defined in the Financial Services and Markets Act 2000, as amended from time to time. This exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only, for which the **practice** has permission pursuant to Part IV of the Financial Services and Markets Act 2000.

3.4.12 **Fines, penalties, punitive, multiple or exemplary damages**

- a) any fines or penalties;
- b) any punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal.

3.4.13 **Insolvency of the insured**

any **claim**, liability, loss or **defence costs** arising out of or relating directly or indirectly to **your** insolvency.

3.4.14 **Legislation and regulation**

any **claim**, liability, loss or **defence costs** arising out of **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to:

- a) the Employment Retirement Income Security Act 1974 and any amendment thereto, or any rules or regulations promulgated thereunder;
- b) any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules or regulations promulgated thereunder;
- 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.

3.4.15 **Liability arising out of employment**

any **claim**, liability, loss or **defence costs** arising from the liability to any **employee**, former **employee** or prospective **employee** in respect of 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.

3.4.16 **Management liability**

any **claim**, liability, loss or **defence costs** caused by or arising from any personal liability incurred by a director or officer of **your** when:

- a) acting in that capacity or managing **your business**; or
- b) in breach of their fiduciary duty, other than when performing a business activity for a client; or

- c) making or issuing any statement, representation or information concerning **you** and the **business services** contained in any accounts, reports or financial statements.

3.4.17 **Negotiable paper**

any **claim**, liability, loss or **defence costs** arising directly or indirectly from the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.

3.4.18 **North American**

any **claim**, loss, liability, expenses, costs or **defence costs**, in respect of any proceedings (including arbitration or regulatory proceedings), judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part).

3.4.19 **Nuclear risks**

- a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- b) any legal liability of whatsoever nature;
- c) any sum which **you** become legally liable to pay or any loss or expense;

directly or indirectly caused by or contributed to by or arising from or, in the case of (c) above, attributable to:

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

3.4.20 **Ombudsman**

any **claim**, liability, loss or **defence costs** in respect of any ombudsman's award, except to the extent where covered is provided under the 'Awards by ombudsman's' clause.

3.4.21 **Other insurance**

any **claim**, liability, loss or **defence costs** where **you** are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this **policy** not been effected.

3.4.22 **Patent and trade secret**

any **claim**, liability, loss or **defence costs** arising out of the infringement of any patent or trade secret.

3.4.23 **Pension, benefit, trust fund management**

any **claim**, liability, loss or **defence costs** arising from **your** operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or **your** breach of any legalisation or regulation related to these activities.

3.4.24 **Pollution**

any **claim**, liability, loss or **defence costs** for:

- a) **bodily injury**, sickness, disease or death or loss, damage or loss of use of property directly or indirectly caused by seepage, **pollution** or contamination; and/or
- b) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances;

provided always that:

- c) this exclusion shall not apply to loss of or physical damage to or destruction of tangible property or loss of use of such property destroyed or damaged where:
 - i) such seepage, **pollution** or contamination is caused by a sudden, unintended and unexpected happening during the **period of insurance**; and
 - ii) the same is a direct result of **your** negligent act, negligent error or negligent omission';
- d) for the purposes of this exclusion only asbestos is deemed not to be a contaminant or a **pollutant**;
- e) the cover granted by the rider to this clause shall be limited to that part of any **claim** which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure but not the cost of remedying and/or rectifying any loss of or damage to the land and environment or any loss of value;
- f) in the event **we** are liable to indemnify **you** under this clause the maximum amount payable including **defence costs** in respect of any one **claim** and in the aggregate during the **period of insurance** shall not exceed the **limit of indemnity** granted by this **policy**.

3.4.25 **Products liability**

any **claim**, liability, loss or **defence costs** directly or indirectly arising out of, or in any way involving goods or products, sold, supplied, recalled, repaired, altered, treated, manufactured, constructed, installed or maintained by **you** or by any consultant, **sub-contractor** or agent of **yours**.

3.4.26 **Reckless and malicious acts of defamation**

any **claim**, liability, loss or **defence costs** directly or indirectly arising out of any defamatory statement that was made deliberately or recklessly by **you**.

3.4.27 **Retroactive date**

any **claim**, liability, loss or **defence costs** arising from any act committed, or alleged to have been committed, prior to the **retroactive date**.

3.4.28 **Surveys and valuations (qualifications and experience)**

any **claim**, liability, loss or **defence costs** arising out of a survey or valuation unless it was undertaken by:

anyone who is:

- i) A Fellow, a Professional Member, a Technical Member or an Associate Member
 - ii) of the Royal Institution of Chartered Surveyors (RICS); or
 - iii) A Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
 - iv) A Fellow or Associate of the Architects and Surveyors Institute (ASI); or
 - v) A Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
 - vi) A Fellow or Associate of the Royal Institute of British Architects (RIBA); or
 - vii) A Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS); or
- b) Anyone who has not less than five years' experience of such work; or
- c) Any other person delegated by **you** to execute such work subject always to:
- i) supervision of such work by a person qualified in accordance with 'Surveys and valuations' a) or b) or above, or
 - ii) agreement in writing having been obtained from **us** prior to cover being granted.

any **claim**, liability, loss or **defence costs** arising out of:

- d) a survey undertaken in connection with the production of an Energy Performance Certificate, unless it was undertaken by an energy assessor accredited by any organisation approved by the Department for Communities and Local Government to provide such accreditation.
- e) a survey undertaken in connection with the production of a Home Condition report, unless it was undertaken by anyone who has a Diploma in Home Inspection from the Award Body of the Built Environment.
- f) a valuation produced prior to 30 April 2011, unless it was undertaken by a person qualified in accordance with 'Surveys and valuations' a), b) or c) above.
- g) a valuation produced after 30 April 2011:
 - i) unless it was undertaken or supervised by a RICS Registered Valuer and in accordance with RICS Valuation Standards PS 1; or
 - ii) where the RICS Valuation Standards do not apply, unless it was undertaken by a person qualified in accordance with 'Surveys and valuations' a), b) or c) above.

3.4.29 Territorial limits

any **claim**, liability, loss or **defence costs** arising from or alleged to have been caused by or sustained from an act committed outside the **territorial limits**.

3.4.30 Trading losses

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:

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

- c) **your** decision to notify individuals or procure credit monitoring services following any form of data breach.

3.4.31 **War and terrorism**

any **claim**, loss, liability, expenses, costs or **defence costs** of whatsoever nature directly or indirectly caused by, resulting from or in connection with **war** or **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the **claim**.

This exclusion also excludes any **claim**, liability costs, **defence costs** or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

3.5 **Other Professional liability terms and conditions**

3.5.1 **Accounts**

Your annual accounts shall be prepared and/or certified by an independent and properly qualified accountant or auditor in accordance with the RICS Rules of Conduct, and **your** client, where applicable, have been kept in accordance with the RICS Rules of Conduct.

4 Section B - Directors' and officers' liability

4.1 Directors' and officers' cover

4.1.1 Directors' and officers' liability

We agree, subject to the terms, conditions, limitations and exclusions of this **policy**, to pay on behalf of an **insured person** in respect of his liability for:

- a) compensatory damages and costs awarded against such **insured person** by a court or tribunal empowered to do so; or
- b) exemplary or aggravated damages for libel and slander awarded against such **insured person** by a court or tribunal empowered to do so; or
- c) multiple, exemplary or punitive damages (provided these are in addition to compensatory damages and not a form of tax, fine or similar penalty) awarded by a court or tribunal outside of **North America**, if indemnity for this is lawful under the laws of the territory of that court or tribunal; or
- d) settlements compromising any actual or anticipated legal proceedings made with **our** prior written consent;

arising solely from a **claim** first made during the **period of insurance** and arising from a **wrongful act** undertaken anywhere in the world, except to the extent that the **company** has indemnified the **insured person** in respect of that **claim**.

4.1.2 Company reimbursement

We agree, subject to the terms, conditions, limitations and exclusions of this **policy**, to indemnify the **company**, to the extent it has lawfully indemnified an **insured person** for a **claim** otherwise insured under this **section**.

4.1.3 Limit of Indemnity

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

4.2 Defence costs

4.2.1 Defence costs

In respect of **claims** covered by this **section we** agree, subject to **our** prior written consent to pay **defence costs** which are incurred by an **insured person** in the defence, negotiation and settlement of any **claim**.

4.2.2 Advancement of defence costs and expenses

In respect of **claims** covered by this **section we** will advance **defence costs** prior to the final settlement of a **claim**. Such advance payments of **defence costs** shall be:

- a) subject to the application of the **excess**, if any;
- b) part of and not exceed the **limit of indemnity**; and
- c) repayable to **us** by the **insured persons** or the **company** severally according to their respective interests in the event and to the extent that it is determined that they were not entitled under this **section** to payment of such **defence costs**.

4.3 Directors' and officers' exclusions and limitations

This **section** excludes and does not cover **claims**:

4.3.1 Bodily injury or property damage

for actual or alleged bodily or psychological injury, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, except that this exclusion does not apply to emotional distress or mental anguish brought as part of a **claim** arising out of any **employment practice**;

4.3.2 Dishonesty

directly or indirectly arising out of any actual dishonest, fraudulent, or malicious act of any **insured person** except that this exclusion only applies if it is established through a final adjudication or admission that the relevant conduct did in fact occur;

4.3.3 Excess

the amount of the **excess** stated in the **schedule** but only in respect of any **claim** made by the **company**.

4.3.4 Non-covered acts

directly or indirectly arising out of **wrongful acts** committed (or alleged to have been committed) or conduct (as described in clause 20.12.5):

- a) after the date of commencement of the winding up of, or the appointment of a receiver, administrative receiver, liquidator or administrator to the **company**;
- b) after the date of a **take-over or merger**; or
- c) prior to the date of acquisition by the **company** of a **subsidiary company**;

but only as regards acts committed in the capacity as a **director or officer** of such **company** unless otherwise agreed by **us**;

4.3.5 North American jurisdiction

for loss, liability, expenses, costs or **defence costs**, in respect of any proceedings (including arbitration or regulatory proceedings), judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part).

4.3.6 Pension schemes

for any actual or alleged breach of duty by any **insured person** as a trustee of any pension or superannuation scheme, health and welfare plan, share option scheme or plan, or other employee benefit programme, social benefits system or trust programme established or maintained for the benefit of the **company's** employees including, for the avoidance of any doubt, any claims under the UK Pensions Act 1995, or similar legislative, common or civil law provisions in the same or other jurisdictions;

4.3.7 Personal profit

directly or indirectly arising out of any **insured person** gaining any actual profit or advantage or receiving any remuneration to which they are not legally entitled except that this exclusion only applies if it is established through a final adjudication or admission that the relevant conduct did in fact occur;

4.3.8 Pollution

directly or indirectly arising out of any **pollution** except that this exclusion does not apply to:

- a) any **claim** brought by the **company's** shareholders (without any procurement or instigation by any **insured person** or agent of the **company**) on the basis solely that **pollution** has caused a loss in the value of the share capital of the **company**;
or

- b) **defence costs** incurred in defending a **claim** brought in a member state of the European Union up to the **sub-limit of indemnity** of £50,000

4.3.9 **Prior / pending litigation**

directly or indirectly arising out of the circumstances underlying any **claim** or any legal, administrative or regulatory proceedings against the **insured person** or the **company** first made or commenced prior to the **retroactive date**;

4.3.10 **Professional services**

for any actual or alleged breach of any **business services** and **multimedia activities** by any **insured person**;

4.3.11 **Stock offerings during period of insurance**

- a) directly or indirectly arising out of a **stock offering** during the **period of insurance** unless otherwise agreed by **us**;
- b) brought by or on behalf of any shareholder who owns directly or beneficially more than fifteen percent (15%) of the issued share capital of the **company** except that this exclusion shall only apply to **claims** where such shareholder or shareholder's representative directly or indirectly has participated in or ratified the alleged **wrongful act** being the subject to the **claim**.

4.4 **Directors' and officers' other terms and conditions**

4.4.1 **Excess**

- a) Where a claim is made under this **section** by the **company**, **we** shall only indemnify the **company** for payments over and above the amount stated in the **schedule** as the **excess**. The **excess** shall be applied once to each and every **claim**.
- b) Where a claim is made under this **section** by an **insured person** but the **company** could have indemnified the **insured person** under the applicable general law, but does not do so, the **company** shall reimburse **us** for any indemnity **we** paid up to the amount of the **excess** stated in the **schedule**. However, the **company** shall have no such obligation where its failure to indemnify the **insured person** is due solely to its insolvency.

5 Section C - Crime

5.1 Crime loss cover

We agree, to indemnify an **insured person** in respect of **loss**, first **discovered** during the **period of insurance** or **extended reporting period**, which arises directly from:

5.1.1 Theft of insured's money, securities, funds or property

theft, criminal damage or, where applicable, **forgery of money, tangible securities, funds** or **your property** by any **employee**, or by any **employee** acting in collusion with any third party or any other **employee**;

5.1.2 Theft of client's money, securities, funds or property

theft of the **money, tangible securities, funds** or **property** of any **client**, for which **you** are legally liable, by any **employee** or by any third party (save that such third party must not include such **client's** employees), or by any **employee** acting in collusion with any third party or any other **employee**;

5.1.3 Theft by a third party

- a) **forgery, tangible securities fraud, corporate card fraud, counterfeit** of money orders or current paper currency, **computer fraud** or **funds transfer fraud** by a third party;
- b) **theft** or criminal damage of **money, tangible securities**, as a direct result of **robbery** or **safe burglary**;
- c) **theft of property** as a direct result of **robbery** or **safe burglary**.

5.1.4 Limit of Indemnity

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

5.2 Crime costs

In respect of **loss** covered by this **section** and provided such a **loss** exceeds the **excess** stated in the **schedule**, **we** also agree to pay, with **our** prior written consent, costs incurred by **you** in:

5.2.1 Liability costs

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

5.2.2 Vault costs

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

5.2.3 Data costs

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

5.2.4 Extent of loss costs

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

5.2.5 Property damage costs

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

5.3 Exclusions and limitations

This **section** excludes and does not cover any:

5.3.1 Consequential loss

consequential or indirect loss of any kind, including but not limited to any loss of dividends, income or profit not realised by **you** or any other individual or organisation because of a **loss** covered under this **section** but this exclusion shall not apply to **interest** that forms an integral part of **your** costs covered under this **section**;

5.3.2 Data

costs or expenses incurred:

- a) to update, improve or redesign the programmes or software of **your computer system**;
- b) relating to **data** reconstitution if **you** use programmes or software without the required licenses or authorisation;
- c) relating to the reconstitution of **data** recorded on magnetic or optical media, unless there are analysis files, specifications and backups of software and data held at premises other than at **your** premises;
- d) to enable **data** to be used by a replacement **computer system**;
- e) by an **employee plan** or **client** relating to **data** reconstitution;

5.3.3 Fines and penalties

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

5.3.4 Kidnap ransom and extortion

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

5.3.5 Loss benefiting another insured

loss sustained by one **insured** to the benefit of another **insured**;

5.3.6 Loss sustained after knowledge

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

- a) whilst such **employee** is in any **insured's** service; or
- b) during the term of such **employee's** employment with any **insured**; or
- c) prior to an **employee** being employed by any **insured**, provided the act or acts involved **money**, **tangible securities**, **funds** or **property** valued at £15,000 or more;

5.3.7 Loss by fire or explosion

loss or damage caused to premises caused by fire or explosion;

5.3.8 Loss in the postal service

loss of **money** or **tangible securities** whilst in the care of the postal service;

5.3.9 Major shareholder 20%

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

5.3.10 **Non-covered acts**

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

- a) after the date of commencement of the winding up of the **insured** or the appointment of a receiver, administrative receiver, liquidator or administrator to the **insured**; or
- b) after the date of a **take-over or merger**; or
- c) prior to the date of acquisition of a **subsidiary** as regards **loss** suffered by such **subsidiary**, or
- d) after the date of awareness or **discovery** of dishonesty on the part of an **employee** participating in the **loss**;

5.3.11 **Nuclear hazards**

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

5.3.12 **Profit and loss / inventory calculation**

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

- a) profit and loss computation or comparison; or
- b) comparison of inventory records with an actual physical count.

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

5.3.13 **Proprietary information**

loss arising directly or indirectly from the obtaining of any confidential information, including but not limited to computer programmes, copyright, customer information, patents, trademarks or trade secrets;

5.3.14 **Retroactive date**

loss caused by an act committed, or alleged to have been committed, prior to the **retroactive date**;

5.3.15 **Trading**

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

5.3.16 **War and terrorism**

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

6 Section D - Corporate legal liability

6.1 Corporate liability cover

6.1.1 Corporate liability

We agree, subject to the terms, conditions, limitations and exclusions of this **policy**, to pay **loss** incurred by the **company** resulting from a **claim** first made against the **company** during the **period of insurance** and reported to **us** as required by the Claim procedure herein, in connection with any liability arising from any actual or alleged act, error or omission of the **company**.

6.1.2 Defence costs

We shall pay the **defence costs** with **our** prior written consent incurred by the **company** resulting from any **claim**:

- a) in connection with an alleged breach by any **company** of any express (written or oral) contract or agreement;
- b) made against such **company** by a third party entity, where such:
 - i) **claim** is in connection with any direct financial **loss** sustained by such third party; and
 - ii) direct financial **loss** directly arises in connection with any dishonest or fraudulent act committed by any **employee** of such **company** acting in collusion with any director, officer, governor, trustee or **employee** of such third party, with the intent to obtain improper personal financial gain for such **employee** or other person, to the deprivation of the third party entity.

6.1.3 Pension Schemes

We shall pay the **loss** of any **company** resulting from any **claim** in connection with any act, error or omission in connection with the operation, administration or sponsorship of any pension, profit sharing or **employee** benefits programme whose activities are not controlled by **pension trustees** except that this insurance excludes and does not cover any **pension trustee liability**.

6.1.4 Identity fraud

If any party other than an **insured person** enters into any agreement with any third party entity fraudulently representing themselves as any **company**, then **we** shall pay any reasonable fees, costs and expenses incurred by such **company** in establishing that such fraudulent misrepresentation has occurred should the third party entity seek to enforce such agreement against such **company**.

6.1.5 Crisis event

We shall pay the **insured entity's** reasonable fees, costs and expenses of **public relations consultants** to mitigate the adverse effect or potential adverse effect on an **insured entity's** reputation with respect to a **crisis event**.

6.1.6 Limit of indemnity

In respect of the insurance provided by clauses 6.1.2 to 6.1.5 (inclusive) above **our** liability in respect of each separate cover shall not exceed:

- a) a sub-limit of indemnity of £100,000 any one **claim**; and
- b) the **limit of indemnity** stated in the **schedule** in the aggregate for any one and all the insurances provided by clauses 6.1.2 to 6.1.5 (inclusive) during anyone **period of insurance**.

6.2 Corporate liability cover extensions

6.2.1 Assets and liberty costs

We shall pay the reasonable fees, costs and expenses incurred by any **insured person** with respect to any **asset and liberty proceeding** except that **our** liability shall not exceed a sub-limit of indemnity of £50,000 any one **claim** and in the aggregate during anyone **period of insurance**.

6.2.2 Bodily injury and property damage defence costs

We shall pay the **defence costs** with **our** prior written consent of each **insured** for any **claim** for **bodily injury** and/or **property damage** provided that:

- a) the insurance by this extension clause excludes and does not cover **defence costs** any **claim** for which insurance is proved by any other section to this **policy** or any other insurance other than in excess of any indemnity under such a policy; and
- b) **our** liability shall not exceed a sub-limit of indemnity of £50,000 any one **claim** and in the aggregate during anyone **period of insurance**.

6.2.3 Civil fines and penalties

We shall pay any civil fine or penalty imposed upon an **insured person** by an **official body** as a direct result of such person acting in an **insured person** capacity unless that civil fine or penalty is uninsurable under the applicable law of the **claim**.

6.2.4 Court attendance

We shall pay the following rates per day for each day on which attendance in a **court** by an **insured person** is required in connection with any covered **claim**:

- a) for any director or officer; **outside company director**; or any **employee** of an **insured entity** acting in a managerial or supervisory capacity: £500
- b) any other **insured person** not referred to in (a) above: £250

6.2.5 Emergency costs

If **our** written consent cannot reasonably be obtained before **defence costs** are incurred in respect of a **claim**, **we** will give retrospective approval for such **defence costs** subject to **our** liability not exceeding a sub-limit of indemnity of £50,000 any one **claim** and in the aggregate during anyone **period of insurance**.

6.2.6 Extended reporting

The insurance by this **section** is extended to provide **you** with an **extended reporting period** of ninety (90) days if this **policy** is not renewed or replaced with a similar policy.

This **extended reporting period** may be extended further upon **your** written request when **we** may quote a run-off **extended reporting period** period. In considering such request, **we** shall be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations that **we** reasonably deems appropriate.

6.2.7 Extradition counselling, tax advisor costs and public relations expenses

We will pay for the reasonable fees, costs and expenses incurred by any **insured person** for each of (a) and (b) below:

- a) accredited counsellor or tax advisor retained by an **insured person** approved by **us**, directly in connection with extradition proceedings brought against such **insured person**; or
- b) **public relations consultants** to provide **public relations services** in connection with extradition proceedings;

except that **our** liability shall not exceed a sub-limit of indemnity of £50,000 any one **claim** and in the aggregate during anyone **period of insurance**.

6.2.8 **Legal expenses policy**

Where any **insured** holds a legal expenses policy at the same time as this **section**, which provides cover which is the same as any cover provided under this **section**, such that the **insured** is covered for legal expenses under both this insurance and the legal expenses policy, then **we** shall pay such legal expenses as a primary insurer on the condition precedent that prior to such payment, **you** have notified the legal expenses policy insurer in writing of **your** request for cover with respect to such legal expenses, and **you** have provided written evidence to **us** of such notification.

6.2.9 **New subsidiary**

If the **policyholder** during the **period of insurance**:

- a) obtains either directly or indirectly, through one or more of its **subsidiaries**:
 - i) control of the composition of the board of directors;
 - ii) control of more than half of the shareholder voting power; or
 - iii) a holding of more than half of the issued share capital; of any entity; or
- b) creates any entity,

then the term **subsidiary** will be extended to include that entity automatically except that the cover by this clause excludes and does not apply to any such control or holding or creation, where the entity is:

- iv) incorporated or domiciled in **North America**;
- v) has any of its securities listed on a securities exchange or market; or
- vi) is situated in a country in which a **company** does not already hold a **subsidiary**.

6.2.10 **Public relations expenses**

We shall pay the reasonable fees, costs and expenses of **public relations consultants** to provide **public relations services** in connection with a covered **claim**, where such **public relations expenses** are not otherwise specifically covered elsewhere in this **policy** except that **our** liability shall not exceed a sub-limit of indemnity of £50,000 any one **claim** and in the aggregate during anyone **period of insurance**.

6.2.11 **Run-off for retired insured persons**

We will provide an **extended reporting period** of six (6) years for any **manger** or **pension trustee**, who retires or resigns prior to or during the **period of insurance**, other than by reason of a transaction; and provided that:

- a) the cover purchased under this **section** is not renewed or replaced; or
- b) where the cover purchased under this **policy** is renewed or replaced, such renewal or replacement policy does not provide an extended discovery provision of at least six (6) years for such person.

6.3 **Corporate liability exclusions and limitations**

This **section** excludes and does not cover **loss**:

6.3.1 **Anti-competitive practices**

in connection with any **claim** made for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

6.3.2 **Bodily injury and/or property damage**

in connection with any **claim** made for **bodily injury** and/or **property damage** except for the insurance provide by clause 6.2.2 - Bodily injury and property damage defence costs.

- 6.3.3 **Conduct**
arising out of, based upon or attributable to:
- a) the gaining of profit or advantage to which **you** were not legally entitled; or
 - b) the committing of any deliberate dishonest or fraudulent act,
- in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission by **you**.
- 6.3.4 **Contract**
arising out of, based upon or attributable to any liability of any **company** under any express oral or written contract or agreement but this exclusion shall not apply to any **company** liability that would have attached in the absence of such contract nor any cover insurance provided by clause 6.1.2 a).
- 6.3.5 **Employee benefits**
arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, pension benefits or any similar law or obligation whatsoever but this exclusion shall not apply the insurance provided by clause 6.1.3 - Pension Schemes
- 6.3.6 **Employment practices liability**
any **claim** arising out of, based upon or attributable to **employment practices liability**.
- 6.3.7 **Excess**
the amount of the **excess** stated in the **schedule**.
- 6.3.8 **Intellectual Property Rights**
in connection with any **claim** made for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.
- 6.3.9 **Insolvency of the insured**
any **claim**, liability, loss or **defence costs** arising out of or relating directly or indirectly to **your insolvency**.
- 6.3.10 **North American entities**
arising out of, based upon or attributable to any **claim** which is brought in a court of law in any **North American** state or province by or on behalf of any:
- a) **insured**; or
 - b) **outside company** in which such **insured person** serves or served as an **outside company director**.
- but this exclusion shall not apply to:
- c) any **claim** against any **insured person**:
 - i) for any employment practice violation brought by any **insured person**;
 - ii) pursued by an **insured person** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered by this policy;
 - iii) pursued by any past director or officer or **employee** of any **company** or **outside company**; or
 - iv) pursued by an insolvency administrator, receiver or trustee or liquidator of any **company** or **outside company** either directly or derivatively on behalf of a **company** or **outside company**; or
 - d) **defence costs** of any **insured person**.

- 6.3.11 **Pollution**
arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of, or records concerning, **pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**.
- 6.3.12 **Pre-investigations and investigations**
of fees, costs or expenses in relation to **investigations** or **pre-investigations**.
- 6.3.13 **Prior claims and circumstances**
arising out of, based upon or attributable to:
- a) facts alleged or the same or related acts, errors or omissions alleged or contained in any **claim** which has been reported or in any **circumstances** of which notice has been given under any policy of which this **policy** is a renewal or replacement or which it may succeed in time; or
 - b) any pending or prior civil, criminal, administrative or regulatory proceeding, **investigation**, arbitration or adjudication as of the **retroactive date**, or alleging or deriving from the same or essentially the same facts as alleged in such actions.
- 6.3.14 **Proceedings seeking fines or penalties**
in connection with any **claim** seeking fines or penalties or non-monetary relief against any **insured** entity; provided that this exclusion shall not apply to:
- a) securities **claims**;
 - b) civil fines as provided by clause 6.2.3.
- 6.3.15 **Professional services**
in connection with any **claim** made for rendering or failure to render any **business services** and **multimedia activities** to a customer or client of the **insured**;

7 Section E - Pension Trustees liability

7.1 Trustees liability cover

We agree, subject to the terms, conditions, limitations and exclusions of this **policy**, to pay on behalf of each **trustee** or **administrator**:

- 7.1.1 compensatory damages and costs awarded against such **trustee** or **administrator** by a court or tribunal empowered to do so; or
- 7.1.2 exemplary or aggravated damages for libel and slander awarded against such **trustee** or **administrator** by a court or tribunal empowered to do so; or
- 7.1.3 multiple, exemplary or punitive damages (provided these are in addition to compensatory damages and not a form of tax, fine or similar penalty) awarded by a court or tribunal outside of **North America**, if indemnity for this is lawful under the laws of the territory of that court or tribunal; or
- 7.1.4 settlements compromising any actual or anticipated legal proceedings made with **our** prior written consent);
- 7.1.5 **defence costs** incurred with **our** prior written consent;

arising from any **claim** for a **wrongful act** which is first made against a **trustee** or **administrator** during the **period of insurance** and notified to **us** in accordance with the terms of this **policy**;

7.2 Theft cover

We agree, subject to the terms, conditions, limitations and exclusions of this **policy**, to indemnify the **trust scheme** for any loss sustained in consequence of any **theft** provided always that:

- 7.2.1 such loss is first discovered by **you** during the **period of insurance** and is notified in writing to **us** within twenty-eight (28) days after the date of such discovery;
- 7.2.2 **we** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of any **insured**;
- 7.2.3 **we** shall not be liable for any loss sustained as a result of any **theft** committed or condoned by any **trustee** or **administrator**;
- 7.2.4 **you** shall bear the burden of providing satisfactory proof to substantiate any loss hereunder (including any costs incurred in such process) and **we** will be under no obligation to provide indemnity to **you** until such time as **we** are satisfied that such loss has, in fact, been sustained;
- 7.2.5 any money which, but for the dishonest or fraudulent act or omission of the **trustee** or **administrator** concerned, would have been payable by **you** and any money of the **trustee** or **administrator** concerned shall be deducted by **you**, to the extent it is legally entitled to do so, from the amount payable under this clause in diminution or extinction of any loss.

7.3 Limit of Indemnity

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

7.4 Extended reporting period

- 7.4.1 If **we** or **you** refuse to renew this **policy**, **you** shall have the right to effect an extension of the insurance so that for the purpose of this **policy** a **claim** shall be deemed to be made in the **period of insurance** if it is first made during the **extended reporting period**.
- 7.4.2 There shall be no cover under the **extended reporting period** for **wrongful acts** committed (or alleged to have been committed) after the expiry of the **period of insurance**.
- 7.4.3 **Your** right under this Extended reporting period clause is only exercisable if **you** give written notice and pay the additional premium requested within ten (10) days immediately following expiry of the **period of insurance**.
- 7.4.4 **Your** right under this clause is not exercisable after or alternatively as the case may be the **extended reporting period** shall lapse upon effecting pension trustees' liability insurance or similar insurance with any other insurer or underwriter or similar entity.

7.5 Trustee liability exclusions and limitations

This **section** excludes and does not cover any **claim** or loss:

- 7.5.1 **Bodily injury/ property / damage**
for any actual or alleged bodily or psychological injury, sickness, disease (except emotional distress or mental anguish) or death of any person or any actual or alleged damage to or destruction of any tangible property, including loss of use thereof.
- 7.5.2 **Employer contributions**
directly or indirectly arising out of, or in any way involving **your** failure to make adequate contributions to the **trust scheme** unless such loss arises from a **claim** arising out of the unintentional negligent error or omission of any **trustee** or **administrator** and in any event this **policy** will not cover the shortfall in contributions unless **you** are no longer able to make up such shortfall by reason of bankruptcy, insolvency or the like.
- 7.5.3 **Fines and penalties**
for taxes, fines, penalties, exemplary, aggravated, punitive or multiple damages, or any **claim** deemed uninsurable by law, provided that this exclusion shall not apply to any of the following to the extent that they are insurable at law:
- a) any monetary award or civil fine or penalty awarded against any **insured** under the Pensions Act 1995, either by the Pensions Ombudsman appointed by the Secretary of State for Social Services and/or by the Occupational Pensions Regulatory Authority or any successor body thereof unless the **trustees** have failed to pay any consideration to **us** in respect of such coverage; or
 - b) exemplary or aggravated damages for libel or slander as covered under clause 7.1.2; or
 - c) any multiple, exemplary or punitive damages as covered under clause 7.1.3.
- 7.5.4 **Fraud**
directly or indirectly arising out of, or in any way involving any actual dishonest, fraudulent or malicious act of that **insured** except that this exclusion only applies if it is established through a final adjudication or admission that the relevant conduct did in fact occur.
- 7.5.5 **Non-covered acts**
directly or indirectly arising out of **wrongful acts** committed (or alleged to have been committed):
- a) after the date of commencement of the winding up of, or the appointment of a receiver, administrative receiver, liquidator, or administrator to the **company** or the **trust scheme**.

- b) after the date of a **take-over or merger**: or
 - c) prior to the date of acquisition by the **company** of a **subsidiary company**;
- but only as regards acts committed in the capacity as a **trustee** or **administrator** of such **company**, **subsidiary company**, or **trust scheme** and unless otherwise agreed by **us**.

7.5.6 **North America**

for loss, liability, expenses, costs or **defence costs**, in respect of any proceedings (including arbitration or regulatory proceedings), judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part).

7.5.7 **Personal profit**

directly or indirectly arising out of any **insured** gaining any actual profit or advantage or receiving any remuneration to which they are not legally entitled except that this exclusion only applies if it is established through a final adjudication or admission that the relevant conduct did in fact occur.

7.5.8 **Pollution**

directly or indirectly arising out of, or in any way involving any **pollution**.

7.5.9 **Prior / pending litigation**

directly or indirectly arising out of the circumstances underlying any **claim** or any legal, administrative or regulatory proceedings against any **insured** first made or commenced prior to the **retroactive date**.

8 Section F - Cyber liability

8.1 Cyber liability cover

We will indemnify **you** against compensatory damages or awards (including where applicable claimants' legal costs and expenses) for any **claim** first made against **you** during the **period of insurance** and reported to **us** as required by the Claim procedure herein, arising from:

- 8.1.1 the content of **your** email, intranet, extranet or website (including its domain name, metatags and hyperlinks and the marketing and advertising of **your business** on the website), including alterations or additions made by a **hacker**, and due to:
- a) **your** infringements of any intellectual property rights, including any copyright, trademark, passing off or link to or framing of another page;
 - b) any defamatory statement on **your** website or in **your** email, including any defamatory statement concerning a client or **your** business competitor;
 - c) **your** breach of confidence or infringement of any right to privacy;
- 8.1.2 **your** negligent transmission of a **computer virus**, worm, logic bomb or Trojan horse to anyone in the course of **your business services** or to anyone who uses **your** website in the course of their business;
- 8.1.3 **your** unintentional unauthorised collection, misuse or failure to correctly protect any data concerning any customer or potential customer of **yours** which is either confidential or subject to statutory restrictions on its use and which **you** obtained through the internet, extranet or website and hold electronically;
- 8.1.4 a third party's good faith reliance on a **hackers** fraudulent use of **your** encrypted electronic signature, encrypted electronic certificate, email or website where there was a clear intention to cause **you** loss or obtain a personal gain for the **hacker**.

8.2 Limit of Indemnity

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

8.3 Cyber liability extensions

8.3.1 Damage by hacker

Further **we** agree that if during the **period of insurance**, a **hacker** damages, destroys or alters **your** website or computer system, **we** will repair or replace the affected part of the website or computer system to the same equivalent standard and with the same content or as near as reasonably possible as immediately before it was damaged, destroyed or altered. Where **we** give prior written consent, such repairs or replacements may be made directly by **you** and **we** will reimburse **you** accordingly.

8.3.2 Advertising expenses

If a **claim** arises from the cover under this cyber liability clause **we** will also pay any advertising or publicity expenses reasonable and necessarily incurred, and with **our** prior written consent in contacting any people who attempted to use the website while it was damaged, destroyed or altered.

8.4 Cyber liability exclusions

This **section** excludes and does not cover:

8.4.1 Bodily injury

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from or in any way involving actual or alleged **bodily injury** suffered by anyone.

8.4.2 Consequential loss

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from:

- a) **your** lost income, profit, mark-up or liability for VAT or its equivalent;
- b) **your** trading loss or trading liability including those arising from the loss of any client, account or business.

8.4.3 Credit, debit, charge or store card

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from unauthorised use of any credit, debit, charge, store card or other electronic transmission of funds by **you** or any third-party.

8.4.4 Deliberate or reckless acts

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from any act, breach, omission or infringement **you** deliberately, dishonestly or recklessly commit, condone or ignore.

8.4.5 Excess

the **excess** as specified in the **schedule**.

8.4.6 Internet service provider

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from or in any way involving the failure of the service provided by an internet services provider or any telecommunications or other utility provider.

8.4.7 Patent

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from the infringement of any patent.

8.4.8 Personal use

any **claim**, loss, liability, expenses, costs or **defence costs** directly arising from the use of IT systems in a personal capacity by **your** partners, directors or employees. Use in a personal capacity is deemed to mean any use not relating to or necessary to **your business**.

8.4.9 Prior / pending litigation

directly or indirectly arising out of the circumstances underlying any **claim** or any legal, administrative or regulatory proceedings against any **insured** first made or commenced prior to the **retroactive date**.

8.4.10 Self-replicating computer virus

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising from the transmission by **you** of any **computer virus** which indiscriminately replicates itself and is automatically disseminated on a global or national scale.

8.5 Cyber liability conditions precedent

8.5.1 Protection of computer systems

It is agreed as a condition precedent to **our** liability under this **section** that **you** shall:

- a) have virus protection software operating on its IT system(s) which is running, correctly configured and regularly or automatically updated.
- b) have a fire wall or similar configured device to control access to its IT system(s).
- c) encrypt and control the access of all IT systems and external devices including plug-in devices networked to **your** IT system(s).
- d) control unauthorised access to its IT system(s) by correctly configuring its wireless network.
- e) change all passwords on its IT system(s) at least every sixty (60) days and cancel any username, password or other security protection after it knew or had reasonable grounds to suspect that it had been available to any unauthorised person.
- f) take regular back-up copies of any data, file or programme on its IT system.
- g) have an operational system for logging and monitoring user activity on its IT system(s).
- h) comply with the 1998 Data Protection Act where it has facility to collect names, addresses and other personal details.

8.5.2 Duty of disclosure

It is agreed as a condition precedent to **our** liability under this Cyber liability extension that, notwithstanding any other term in this **policy** relating to disclosure, **you** have made a full and complete disclosure in providing information to **us** in relation to the insurance granted by this **section** and in event of breach of this duty of disclosure, **we** may reject or reduce any claim causally connected to non-disclosure.

9 Section G - Contents

9.1 Property insured

Item 1 Office contents

Contents within the **premises** all belonging to **you** or for which **you** are responsible including:

- 9.1.1 landlords fixtures and fittings tenants improvements and interior decorations insofar as they are not otherwise insured;
- 9.1.2 plans, deeds, briefs, manuscripts, books, documents and office records limit any one item £1,000;
- 9.1.3 computer discs and tapes limit any one item £1,000;
- 9.1.4 personal effects limit any one person £1,000;
- 9.1.5 wines, spirits, cigarettes and tobacco held for entertainment purposes up to a limit of £1,000 any one incident;
- 9.1.6 works of art, rare books, sculptures, curios and collections for an amount not exceeding £1,000 any one incident;
but excluding vehicles licensed for road use (and their accessories) and excluding property described by Items 2, 3, 4 and 5 of this **section**.

Item 2 Computers and ancillary equipment

Computers and ancillary equipment used for electronic processing communication and storage of data including:

- 9.1.7 fixed discs interconnecting wiring and telecommunications systems;
- 9.1.8 temperature and environmental control equipment power supply voltage regulating and other protective equipment used exclusively in connection with the computer equipment.
- 9.1.9 all current and back up computer records (excluding fixed discs and paper records of any description) incorporating stored programs and/or information stored
being **your** property or leased hired or rented to **you** on the **premises** and subject to **our** limit of liability under item 2 not exceeding 25% of this Contents **section sum insured** or £10,000 whichever is the greater but not exceeding the declared contents **sum insured**;

Item 3 Stock and trade samples

Stock and trade samples within the **premises** all belonging to **you** or for which **you** are responsible and subject to **our** limit of liability under item 3 not exceeding 25% of the declared contents **sum insured** or £10,000 whichever is the lesser.

Item 4 Refrigerated drugs and medicines

Refrigerated drugs and medicines within the **premises** all belonging to **you** or for which **you** are responsible.

Item 5 Refrigerated contents excluding drugs and medicines

Refrigerated contents other than that described by Item 4 above within the **premises** all belonging to **you** or for which **you** are responsible pertaining to the **business** and contained within the buildings at the **premises** excluding any property otherwise insured money, merchandise, gold and silver articles, plate jewellery and furs.

9.2 Coverage - Insured perils

We will indemnify **you** against **damage** to the property insured specified in the **schedule** caused by the under noted perils:

- 9.2.1 Fire (including subterranean fire) explosion lightning or earthquake;
- 9.2.2 Storm or flood excluding:
 - a) **damage** caused by frost, subsidence, ground heave or landslip;
 - b) **damage** attributable solely to change in water table level;

- c) **damage** to moveable property in the open;
 - d) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 9.2.3 Escape of water from any tank apparatus or pipe excluding:
- a) **damage** to the contents of any building which is unoccupied or not in use;
 - b) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 9.2.4 Riot, civil commotion, strikers, locked-out workers or persons taking part in labour disturbances or malicious persons excluding:
- a) **damage** arising from cessation of work;
 - b) as regards **damage** (other than fire or explosion) directly caused by malicious persons not acting on behalf of or in connection with any political organisation:
 - i) **damage** by theft;
 - ii) **damage** in respect of the contents of any building which is unoccupied or not in use;
 - iii) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 9.2.5 Impact with the building by aircraft or other aerial devices or articles dropped from them or by any vehicle, train, animal, falling branch, aerial or mast or satellite dish.
- 9.2.6 Theft or any attempt thereat (including **damage** to the building for which **you** are responsible) involving entry to or exit from the building by forcible and violent means excluding:
- a) **damage** to the contents of any building which is unoccupied or not in use;
 - b) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 9.2.7 Theft by violence or threat of violence to the **insured, your** family or employees excluding the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 9.2.8 Leakage of oil from any fixed heating installation.
- 9.2.9 Any other accidental **damage** occurring in the building excluding:
- a) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average;
 - b) **damage** caused by or resulting from:
 - i) wear tear the action of light or atmosphere, moths, vermin, insects;
 - ii) any process of cleaning, dyeing, restoring, adjusting or repairing;
 - iii) corrosion, dampness, dryness, wet or dry rot marring, scratching, bruising or deterioration;
 - c) **damage** to any machine or apparatus arising from mechanical electrical or electronic breakdown or derangement or from adjustment maintenance or repair;
 - d) **damage** specifically excluded in **insured perils** 9.2.1 - 9.2.8 and 9.2.10;
 - e) **damage** specifically excluded in the General Exceptions;
 - f) normal maintenance or repair;
 - g) erasure or distortion of information on computer systems or other records;
 - h) **damage** to any computer or other equipment or component or system or item which processes stores transmits or retrieves data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software) and whether **your** property or not or where such **damage** is caused by programming or operator error, **computer virus** or **hacking**;
 - i) any disappearance or shortage revealed only at the time of stock taking or the making of any inventory or due to error or omission;
 - j) **damage** by confiscation or detention by Customs or other officials or authorities;
 - k) **damage** following dishonesty or fraudulent action by **your employees** or any person lawfully in the building;

- l) **damage** caused by or resulting from theft or any attempt thereat;
 - m) **damage** caused by or resulting from subsidence, ground heave or landslip.
- 9.2.10 Subsidence or ground heave of any part of the site on which the **premises** stands or landslip excluding:
- a) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average;
 - b) **damage** to yards, car parks, roads, pavements, walls, gates and fences unless also affecting a building insured hereby;
 - c) **damage** caused by or consisting of:
 - i) the normal settlement of bedding down of new structures;
 - ii) the settlement or movement of made-up ground;
 - iii) coastal or river erosion;
 - iv) defective design or workmanship or the use of defective materials;
 - v) fire, subterranean fire, explosion, earthquake or the escape of water from any tank, apparatus or pipe;
 - d) **damage** which originated prior to the inception of this cover;
 - e) **damage** resulting from:
 - i) demolition construction structural alteration or repair of any property or;
 - ii) groundworks or excavation at the **premises**.
- Insofar as this insurance relates to **damage** caused by subsidence ground heave or landslip:
- f) **you** shall notify **us** immediately when **you** become aware of any demolition groundworks excavation or construction being carried out on any adjoining site;
 - g) **we** shall then have the right to vary the terms or cancel the cover by this clause.

9.3 Contents – Cover extensions

9.3.1 Deterioration of stock

In the event of refrigerated contents while contained within refrigerating units suffering deterioration or putrefaction due to or arising from **change of temperature** or contamination caused by accidental leakage of refrigerant or refrigerant fumes from the unit then **we** will pay to **you** the value of the refrigerated contents at the time of its deterioration, putrefaction or contamination provided that:

- a) the refrigerated contents are **your** property or held in trust for which **you** are responsible;
- b) the deterioration, putrefaction or contamination occurs during the **period of Insurance**;
- c) in respect of each occurrence of deterioration, putrefaction or contamination **our** liability under this clause will not exceed £1,000 any one occurrence.

9.3.2 Exhibitions

We will indemnify **you** for **damage** (caused by any of the insured perils 9.2.1-9.2.9) to contents up to an amount of £5,000 whilst at any exhibition within the **territorial limit**.

9.3.3 Glass breakage

We will indemnify **you** for the costs of making good the breakage or scratching of fixed glass at the **premises** and **your** private dwelling portion of the **premises** subject to our and in addition the cost of:

- a) temporary boarding-up following glass breakage; and
- b) repair of **damage** to window frames as a result of such breakage or the cost of removal or replacement of fixtures and fittings in the course of replacement of glass up to a maximum amount of £2,500 for any one occurrence; and
- c) lettering or other ornamental work and alarm foil on glass up to a maximum amount of £2,500 for any one occurrence.

providing that our over liability under this Glass breakage clause does not exceed £10,000 in the aggregate during any one period of insurance.

9.3.4 **Goods in transit**

We will indemnify **you** for **damage** to merchandise and goods and tools incidental to **your business** or **your** property or held in trust and for which **you** are responsible while being carried by any vehicle(s) owned hired or leased by **you** anywhere in the **United Kingdom**. The cover applies from the time the merchandise and goods are lifted by **your employees** until they are placed in position by them at their destination (excluding their installation) including loading and unloading provided that:

- a) **our** liability in respect of any one vehicle trailer or semi-trailer or any one loss or series of losses arising out of one event shall not exceed £5,000;
- b) the insurance by this clause excludes and does not cover:
 - i) the deterioration of goods conveyed in frozen, chilled or insulated condition due to faulty stowage or incorrect setting or operation of the equipment or variations in temperature unless directly due to fire or accident to the conveying vehicle or to theft or attempted theft;
 - ii) **damage** due to natural deterioration;
 - iii) any consequential or indirect **damage** due to delay;
 - iv) **damage** to bills of exchange, promissory notes, **money** securities for **money** stamps, precious stones, jewellery, bullion or loss or death of or injury to living creatures.
- c) it is a condition precedent to **our** liability under this Goods in transit clause that:
 - i) as regards overnight garaging and in event of **damage** caused by or arising from theft and the vehicle, trailer or semi-trailer is left unattended between the hours of 21.00 and 06.00 such vehicle, trailer or semi-trailer must be securely locked at all points of access and garaged in enclosed premises which are securely locked or have a watchman in constant attendance; and
 - ii) as regards other times of each day and in event of **damage** caused by or arising from theft or pilferage or any attempt thereat involving any vehicle, trailer or semi-trailer which is left unattended or which is laid up temporarily stored in any garage or similar premises unless such vehicle or trailer or semi-trailer has all points of access securely locked.

9.3.5 **Landscaped gardens**

The cost of restoring any **damage** done to landscaped gardens for which **you** are responsible by the emergency services in attending the **premises** as a result of any of the **insured perils** 9.2.1-9.2.9 up to a maximum of £10,000 in any one **period of insurance**.

9.3.6 **Lock replacement**

In the event of the keys of the **premises** being stolen from the **premises** or from the private residence of any director partner or **employee** authorised to hold such keys **we** will pay to **you** an amount not exceeding £2,500 in any one **period of insurance** for the replacement of equivalent locks at the **premises**.

Unless **you** or an **employee** lives on the **premises**, keys to any safe or strongroom must not be left at the **premises** when closed for business.

9.3.7 **Loss of metered water**

The unit cost of metered water at the current rate per cubic metre consumed as a direct result of **damage** (caused by any of the insured perils 9.2.1-9.2.9) up to an amount of £10,000 in respect of any one claim.

9.3.8 Money

We will indemnify **you** for loss of **negotiable money** (not otherwise excluded) held in connection with the **business**:

- a) whilst in transit within the **United Kingdom** or in a bank night safe up to a maximum amount of £2,500 for any one loss;
- b) whilst at the private residence of any principal or your authorised **employee** up to a maximum amount of £500 for any one loss;
- c) from the **premises** during **business** hours up to a maximum amount of £2,500 for any one loss;

except that when the **premises** are closed to **business**:

- d) liability for **money** not contained within a locked safe is limited to £500;
- e) liability for **money** within a locked safe is limited to £2,500.

It is further agreed as a condition precedent to our liability under this clause that

- f) keys and/or combination codes to safes are not left on the **premises** unless the **premises** are still attended by **you** or **your** authorised **employee** in which case such keys and/or combination codes shall be deposited in a secure place not in the vicinity of any safe.

You will be indemnified against loss from any cause of **non-negotiable money** held in connection with the **business** up to a maximum amount of £500,000 for any one loss.

The insurance by this clause excludes and does not cover loss:

- i) arising from fraud or dishonesty of **your employees** unless such loss be discovered within fourteen (14) clear working days of the occurrence;
- ii) due to clerical or accounting errors;
- iii) from unattended motor vehicles.
- iv) of **money** the property of the Post Office.

9.3.9 Personal Accident (Assault)

This cover extension does not apply or operate unless **your** schedule states that this clause is 'included'.

- a) If you or any of **your employees** between the ages of sixteen (16) and seventy (70) years shall suffer **bodily injury** caused solely or directly as a result of robbery or any attempt thereat in the course of the **business**, **we** will pay compensation on the basis of the following table:

- | | |
|--|---------------|
| i) Death | £20,000 |
| ii) Total loss or permanent and total loss of use of one or more limbs occurring within two (2) years of sustaining the bodily injury | £20,000 |
| iii) Total and irrecoverable loss of all sight in one or more eyes occurring within two (2) years of sustaining the bodily injury | £20,000 |
| iv) For any period up to a maximum of two (2) years of total disablement from engaging in usual occupation | £100 per week |

- b) Provided that:

- i) compensation will not be payable under more than one of the items in the compensation table for the same **bodily injury**; and
- ii) no liability will attach to **us** for **bodily injury** arising from or influenced by any existing physical defect or infirmity or the medical condition of any person entitled to compensation hereunder or resulting from pregnancy or childbirth.
- iii) this extension shall not apply where the **business** includes a sub post office.

- c) The insurance by this clause is extended to pay for **damage** to cash carrying devices or clothing and personal effects belonging to **you** or any of **your employees** up to a limit of £1,000 in respect of any one person.

9.3.10 **Rent**

We will indemnify **you** as tenant in respect of his legal liability to pay rent for the period not exceeding two (2) years during which the **premises** is untenable as a result of any of the insured perils up to a maximum of twenty five (25%) percent of the **sum insured** by this **section**.

9.3.11 **Signs**

You will be indemnified against **damage** to signs up to a maximum amount of £2,000 in any one **period of insurance**.

9.3.12 **Temporary removal of documents and contents**

The insurance by item 1 of the property insured extends to cover **damage** caused by any of the insured perils 9.2.1-9.2.9 whilst temporarily removed from the **premises** but remaining within the **United Kingdom** up to a maximum of ten (10%) percent of the **sum insured** by Item 1.

9.4 **All Risks – specified business equipment**

9.4.1 **All risks cover**

The insurance by this **section** is extended to indemnify **you** against **damage** to property insured as described by:

- a) **Item 1 Office contents**
- b) **Item 2 Computers and ancillary equipment**

from any **accident** or misfortune occurring anywhere within the **territorial limits** provided that:

- a) **our** liability does not exceed 10% of this Contents **section sum insured** or £5,000 whichever is the greater but not exceeding the declared contents **sum insured**; and
- b) the insurance by this clause excludes and does not cover the events listed under the 'All risks exclusions and limitations'.

9.4.2 **All risks exclusions and limitations'**

The insurance by this clause 9.4 excludes and does not cover:

- a) the first £250 of each claim;
- b) **damage** by theft or any attempt thereat not involving entry to or exit from the **premises** by forcible and violent means;
- c) **damage** arising from wear and tear or from any process of cleaning, dyeing, restoring, adjusting or repairing;
- d) **damage** arising from or attributable to the action of light or atmosphere, moth, parasites, vermin, corrosion, dampness, marring, scratching, bruising or deterioration;
- e) **damage** (other than by fire) to any machine or apparatus arising from mechanical or electrical breakdown or derangement or arising from adjustment maintenance or repair;
- f) erasure or distortion of information on computer systems or their records;
- g) **damage** to any computer or other equipment or component or system or item which processes, stores, transmits or retrieves data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software) and whether the property is **yours** or not or where such **damage** is caused by programming or operators error, **computer virus** or **hacking**;
- h) loss by official confiscation or detention;

- i) **damage to money**, documents, securities, motor vehicles, caravans, boats, cycles,
- j) household goods, sports equipment, contact or corneal lenses;
- k) **damage** by theft from an unattended motor vehicle unless such vehicle has been securely locked at all points of access.

9.5 Contents other terms and conditions

9.5.1 Basis of claim settlement

- a) Claims for the total loss or destruction of contents (except stock, goods in trust, **employees'** effects and pedal cycles) will be settled on the basis of replacement of property similar to but no better or more extensive than the contents when new;
- b) Claims for partial loss, destruction or **damage** to contents (except stock, goods in trust, **employees'** effects and pedal cycles) will be settled on the basis of restoration to a condition no better or more extensive than the condition of the contents when new;
- c) Claims for computer systems records documents manuscripts **business** books and data carrying materials will be settled on the basis of the value of the materials together with the cost of clerical labour and computer time expended in reproducing such records (excluding any expenses in connection with the production of information to be recorded therein) and not for the value to the Insured of the information contained in them.
- d) Claims for stock and all other property will be settled on the basis of its value at the time of loss or destruction with adjustment for wear and tear
- e) All claims will be settled without deduction in respect of any increases in the **declared value** at risk between the cover date and the time of the **damage** provided that:
 - i) the **declared value** at the inception of this insurance is not less than the cost of reinstatement at inception
 - ii) **you** provided **us** annually at renewal a revised **declared value**
 - iii) **you** comply with General condition - Confirmation of values at risk, otherwise **our** liability for any loss is limited to the proportion of the loss that the **declared value** at inception bears to the cost of reinstatement at inception.

9.5.2 Condition of average

(Only applicable where claims are not paid under the terms of the Reinstatement clause)
If at the time of any **damage** the value of the property insured under any item is greater than its **sum insured you** shall be considered as being **your own** insurer for the difference and shall bear a rateable share of the loss accordingly.

9.5.3 Index linking

We will adjust the **sum insured** in line with suitable indices of costs and the renewal premium for this **section** will be based on the adjusted **sum insured**.

9.5.4 Limit of liability

Subject to the provisions at Coverage clause - Automatic reinstatement of sum insured, the maximum amount payable during any **period of insurance** under any item is the **sum insured** shown in the schedule for the contents of the **premises** adjusted in accordance with the Index linking clause above.

9.5.5 Protections

It is a condition precedent to **our** liability that whenever the **premises** are closed for business or left unattended all security devices provided to protect the **premises** are properly fitted and put into full operation.

10 Section H - Buildings

10.1 Property insured

Item 1 Buildings

The fixed permanent structure at the **premises** including outbuildings, landlords fixtures and fittings therein and thereon walls, gates and fences, yards, car parks and pavements piping, ducting, cables, wires and associated control gear and accessories on the **premises** and extending to the public mains but only to the extent of **your** responsibility.

Item 2 Tenants improvements

The tenants' improvements, alterations and decorations at the **premises**.

10.2 Coverage - Insured perils

We shall indemnify **you** against **damage** to the property insured caused by the under noted perils:

- 10.2.1 Fire (including subterranean fire), explosion, lightning or earthquake;
- 10.2.2 Storm or flood excluding:
 - a) **damage** caused by frost subsidence ground heave or landslip;
 - b) **damage** attributable solely to change in water table level;
 - c) **damage** to moveable property in the open;
 - d) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 10.2.3 Escape of water from any tank, apparatus or pipe excluding:
 - a) **damage** to any building which is unoccupied or not in use;
 - b) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 10.2.4 Riot, civil commotion, strikers, locked-out workers or persons taking part in labour disturbances or malicious persons excluding:
 - a) **damage** arising from cessation of work;
 - b) as regards **damage** (other than fire or explosion) directly caused by malicious persons not acting on behalf of or in connection with any political organisation:
 - i) **damage** by theft;
 - ii) **damage** to any building which is unoccupied or not in use;
 - iii) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 10.2.5 Impact with the building by aircraft or other aerial devices or articles dropped from them or by any vehicle, train, animal, falling branch, aerial or mast or satellite dish.
- 10.2.6 Theft or any attempt thereat (including **damage** to the building for which **you** are responsible) involving entry to exit from the building by forcible and violent means excluding
 - a) **damage** to any building which is unoccupied or not in use;
 - b) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 10.2.7 Theft by violence or threat of violence to **your** family or employees excluding the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.
- 10.2.8 Leakage of oil from any fixed heating installation.
- 10.2.9 Any other accidental **damage** occurring in the building excluding:
 - a) the amount of the excess stated in the schedule in respect of each and every loss as ascertained after the application of any condition of average.

- b) **damage** caused by or resulting from:
 - i) wear, tear the action of light or atmosphere moths, vermin or insects;
 - ii) any process of cleaning, dyeing, restoring, adjusting or repairing;
 - iii) corrosion, dampness, dryness, wet or dry rot, marring, scratching, bruising or deterioration;
- c) **damage** to any machine or apparatus arising from mechanical electrical or electronic breakdown or derangement or from adjustment maintenance or repair;
- d) **damage** specifically excluded in insured perils 10.2.1-10.2.8 and 10.2.10
- e) **damage** specifically excluded by the General exceptions clause;
- f) normal maintenance or repair;
- g) erasure or distortion of information on computer systems or other records;
- h) **damage** to any computer or other equipment or component or system or item which processes, stores, transmits or retrieves data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software) and whether the property is **yours** or not or where such **damage** is caused by programming or operator error, **computer virus** or **hacking**;
- i) any disappearance or shortage revealed only at the time of stock taking or the making of any inventory;
- j) **damage** by confiscation or detention by Customs or other officials or authorities;
- k) **damage** following dishonesty or fraudulent action by **your employees** or any person lawfully in the building;
- l) any shortage due to error or omission;
- m) **damage** by theft or any attempt thereat;
- n) **damage** by subsidence ground heave or landslip.

10.2.10 Subsidence or ground heave of any part of the site on which the **premises** stands or landslip excluding:

- a) the amount of the excess stated in the **schedule** in respect of each and every loss as ascertained after the application of any condition of average;
- b) **damage** to yards, car parks, roads, pavements, walls, gates and fences unless also affecting a building insured hereby;
- c) **damage** caused by or consisting of:
 - i) the normal settlement of bedding down of new structures;
 - ii) the settlement or movement of made-up ground;
 - iii) coastal or river erosion;
 - iv) defective design or workmanship or the use of defective materials;
 - v) fire, subterranean fire, explosion, earthquake or the escape of water from any tank apparatus or pipe;
- d) **damage** which originated prior to the inception of this cover.
- e) **damage** resulting from:
 - i) demolition construction structural alteration or repair of any property; or
 - ii) groundworks or excavation at the **premises**.

Insofar as this insurance relates to **damage** caused by subsidence, ground heave or landslip:

- f) **you** shall notify **us** immediately when **you** become aware of any demolition groundworks, excavation or construction being carried out on any adjoining site;
- g) **we** shall then have the right to vary the terms or cancel the cover.

10.3 Buildings - Other terms and conditions

10.3.1 Condition of average

(Only applicable where claims are not paid under the terms of the Reinstatement clause)
If at the time of any **damage** the value of the property insured under any item is greater than its **sum insured you** shall be considered as being **your own** insurer for the difference and shall bear a rateable share of the loss accordingly.

10.3.2 Damage to cables and underground pipes

We will pay the cost of repairing accidental **damage** for which **you** are responsible to cables and underground pipes and drains (and their inspection covers) on the **premises** or connecting them to the public mains provided such **damage** is not caused by rust, corrosion or other wear and tear.

10.3.3 Index linking

We will adjust the **sum insured** in line with suitable indices of costs and the renewal premium for this **section** will be based on the adjusted **sum insured**.

10.3.4 Limit of liability

Subject to the provisions of the Coverage clause - Automatic reinstatement of sum insured, the maximum amount payable during any **period of insurance** under any item is the **sum insured** shown in the schedule for Buildings of the **premises** adjusted in accordance with the Index linking clause above.

10.3.5 Trace and access

We will pay the reasonable costs necessarily incurred by **you** in locating the source and subsequent making good **damage** resulting from:

- a) the escape of water from any tank apparatus or pipe;
- b) accidental **damage** to cables, underground pipes and drains serving the **premises**.

provided that **our** liability in respect of any one **premises** shall not exceed £25,000 in any one **period of insurance**.

11 Coverage clauses (applicable to sections G and H)

11.1 European Community and Public Authorities (including undamaged property)

11.1.1 Subject to the Special conditions attaching to this clause, the insurance by **sections G and H** extends to include such additional cost of reinstatement as may be incurred solely by reason of the necessity to comply with the stipulations of:

- a) European Community legislation; or
- b) Building or other regulations under or framed in pursuance of any act of Parliament or bye-laws of any public authority (hereafter referred to as "the stipulations") in respect of:
 - i) the **damaged** property thereby insured;
 - ii) **undamaged** portions thereof.

but excluding:

- a) the cost incurred in complying with the stipulations:
 - i) in respect of **damage** occurring prior to the granting of this clause;
 - ii) in respect of **damage** not insured by the **section**;
 - iii) under which notice has been served upon **you** prior to the happening of the **damage**;
 - iv) for which there is an existing requirement which has to be implemented within a given period;
 - v) in respect of property entirely **undamaged** by an insured peril.
- b) the additional cost that would have been required to make good the property **damaged** to a condition equal to its condition when new had the necessity to comply with any of the stipulations not arisen.
- c) the amount of any charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with the stipulations.

11.1.2 Special conditions

- a) The work of reinstatement must be commenced and carried out without unreasonable delay and in any case must be completed within twelve (12) months after the **damage** or within such further time as **we** may allow (during the said twelve (12) months and may be carried out upon another site (if the stipulations so necessitate) subject to **our** liability under this clause not being thereby increased;
- b) If **our** liability under the **section** apart from this clause shall be reduced by the application of any of the terms and conditions of the **policy** then **our** liability under the **section** shall be reduced in like proportion.
- c) The total amount recoverable under any item of the **section** in respect of this clause shall not exceed:
 - i) in respect of the **damaged** property:
 - A. fifteen (15%) percent of its **sum insured**;
 - B. where the **sum insured** by the item applied to property at more than one **premises**, fifteen (15%) percent of the total amount for which **we** would have been liable had the property insured at the **premises** where the **damage** has occurred been wholly destroyed;
 - ii) in respect of **undamaged** portions of property (other than foundations) fifteen (15%) percent of the total amount for which **we** would have been liable had the property insured by the items at the **premises** where the **damage** has occurred been wholly destroyed.
- d) The total amount recoverable under any item of the **policy** shall not exceed its **sum insured**.
- e) All the terms and conditions of the **policy** except insofar as they are varied hereby shall apply as if they had been incorporated herein.

11.2 Reinstatement

11.2.1 In the event of the property insured under **section G** (Items 1 and 2) and **section H** being **damaged** the basis upon which the amount payable hereunder is to be calculated shall be the reinstatement of the property **damaged**.

11.2.2 For this purpose 'reinstatement' means

- a) the rebuilding or replacement of property lost or destroyed which provided **our** liability is not increased may be carried out:
 - i) in any manner suitable to **your** requirements;
 - ii) upon another site.
- b) the repair or restoration of property **damaged** in either case to a condition equivalent to or substantially the same as but not better or more extensive than its condition when new.

11.2.3 Special conditions

- a) **Our** liability for the repair or restoration of property **damaged** in part only shall not exceed the amount which would have been payable had such property been wholly destroyed;
- b) If at the time of reinstatement the sum representing eighty five (85%) percent of the cost which would have been incurred in reinstating the whole of the property covered by any item subject to this clause exceeds its **sum insured** at the commencement of any **damage our** liability shall not exceed that proportion of the amount of the **damage** which the said **sum insured** shall bear to the sum representing the total cost of reinstating the whole of such property at that time;
- c) No payment beyond the amount which would have been payable in the absence of this clause shall be made:
 - i) unless reinstatement commences and proceeds without unreasonable delay;
 - ii) until the cost of reinstatement shall have been actually incurred;
 - iii) if the property insured at the time of its **damage** shall be insured by any other insurance effected by or on **your** behalf which is not upon the same basis of reinstatement.
- d) All the terms and conditions of the **policy** shall apply:
 - i) in respect of any claim payable under the provisions of this clause except insofar as they are varied hereby;
 - ii) where claims are payable as if this clause had not been incorporated.

11.3 Architects, surveyors, legal and consulting engineers fees

Such fees as are necessarily incurred in the reinstatement or repair of the property insured consequent upon its **damage** but not for preparing any claim it being understood that the amount payable under the item shall not exceed in total its **sum insured**.

11.4 Removal of debris

11.4.1 Costs and expenses necessarily incurred by you with our prior consent in:

- a) removing debris;
- b) dismantling and/or demolishing;
- c) shoring up or propping of the portion or portions of the property insured as a result of **damage** hereby insured against.

We shall not pay for any costs or expenses:

- d) incurred in removing debris except from the site of such property **damaged** and the area immediately adjacent to the site;
- e) arising from pollution or contamination of property not insured by **sections G** and **H**.

11.4.2 **Our** liability under this clause and **sections G** and **H** in respect of any item shall in no case exceed the **sum insured** thereby.

11.5 Temporary removal

11.5.1 The property insured is covered whilst temporarily removed for cleaning, renovation, repair or similar purposes elsewhere and in transit thereto and therefrom all in the **United Kingdom**;

11.5.2 **Our** liability under this clause in respect of each Item of the **section** for any **damage** occurring elsewhere than at the **premises** shall not exceed ten (10%) percent of the **sum insured** by the Item;

11.5.3 This clause does not apply to property insofar as it is otherwise insured nor as regards losses occurring elsewhere than at the **premises** from which the property is temporarily removed to motor vehicles and motor chassis licensed for normal road use;

11.6 Capital additions

11.6.1 The insurance by **sections G** and **H** is extended to cover:

- a) any newly acquired and/or newly erected buildings or buildings in course of erection (excluding any property for which a building contractor is responsible) and contents insofar as the same are not otherwise insured; and
- b) alterations additions and improvements to buildings and contents but not in respect of any appreciation in value;

anywhere in the **United Kingdom** provided that:

- c) at any one situation this cover shall not exceed ten (10%) percent of the **sum insured** or £50,000 whichever is the greater;
- d) **you** undertake to give particulars of such extension of cover as soon as practicable and to effect specific insurance thereon retrospective to the date of the commencement of **our** liability;
- e) the provisions of this clause shall be fully maintained notwithstanding any specific insurance effected under clause d).

11.7 Automatic reinstatement of sum insured

In the event of a loss the **sum insured** hereby shall not be reduced by the amount of such loss provided that **you** shall:

11.7.1 pay the appropriate extra premium on the amount of loss from the date thereof to the date of expiry of the **period of insurance**;

11.7.2 if the loss results from theft give effect to any additional protective devices which we may require for the further security of the property insured.

11.8 Notice of unoccupancy

We must be notified in writing immediately the **premises** become unoccupied and a suitable extra premium paid if required.

11.9 Amount excluded aggregation clause

Where a claim is to be dealt with under **sections G** and **H** and under the terms of the **policy**, **you** are responsible for the **excess** under each **section**, then **we** agree that **you** will only be responsible for one **excess** being the higher of the sum stated in the **schedule** applicable to **sections G** and **H**.

12 Section I - Business interruption

12.1 Business interruption coverage

12.1.1 In the event of loss as a result of interruption of or interference with the **business** following **damage** to property at the **premises** as a result of:

- a) an insured peril under clause 9.2 or 10.2;
- b) glass breakage;

damage so caused being termed **damage** for which payment shall have been made or liability admitted by an insurer under any insurance covering **your** interest in the property at the **premises** against such **damage** provided that such **damage** would not have been excluded by **Section G** – Contents or **Section H** – Buildings of this **policy** then **we** shall indemnify you against either:

- c) loss of **gross revenue** in accordance with the following provisions:
 - i) by paying for the **indemnity period** the amount by which the **gross revenue** during the **indemnity period** falls short of the **gross revenue** during the equivalent period immediately before the **damage**;
 - ii) by paying any reasonable additional expenses incurred in maintaining the **gross revenue** during the **indemnity period** but not more than the loss avoided under c)i) less any amount saved during the **indemnity period** in respect of reduced expenses due to the **damage**;

or

- d) **increased cost of working** in accordance with the following provisions:
 - i) by paying any reasonable additional expenses incurred in maintaining the **gross revenue** during the **indemnity period** but not more than the loss avoided under c) i) less any amount saved during the **indemnity period** in respect of reduced expenses due to the **damage**;

as specified in the schedule.

It is understood and agreed that the insurance provided by 12.1.1 c) and d) above are alternatives. **Your** schedule will state which cover is provided and the **sum insured** you have requested.

12.1.2 In adjusting the amount paid all variations or special circumstances affecting the **business** shall be taken into account in order that the amount paid shall represent as nearly as practicable the results which would have been expected if the **damage** had not occurred.

12.1.3 If the **damage** occurs in the first trading year the payment under shall be based on the **gross revenue** immediately prior to the loss.

12.1.4 The indemnity provided under this **section** shall be void if the **business** be wound up or carried on by a liquidator or receiver or permanently discontinued without **our** consent.

12.1.5 No claim shall be payable under this **section** unless **you**:

- a) take all action which may be reasonably practicable to minimise or check any interruption of or interference with the **business** to avoid or diminish the loss; and
- b) at **your** own expense deliver to **us** in writing a statement setting forth particulars of the claim no later than thirty (30) days after the expiry of the **indemnity period** or within such further time as **we** may in writing allow.

12.2 Business interruption - Cover extensions

12.2.1 Alternative trading clause

If during the **indemnity period** professional services shall be rendered elsewhere than at the **premises** for the benefit of the **business** either by **you** or by others on **your** behalf the money paid or payable in respect of such services shall be brought into account in arriving at the reduction of **gross revenue** during the **indemnity period**.

12.2.2 Automatic reinstatement of sum insured

In the event of a loss the **sum insured** hereby shall not be reduced by the amount of such loss provided that **you** shall:

- a) pay the appropriate extra premium on the amount of loss from the date thereof to the date of expiry of the **period of insurance**;
- b) if the loss results from theft give effect to any additional protective devices which **we** may require for the further security of the property insured.

12.2.3 Contract sites and transit

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1, to documents belonging to or held in trust by **you** whilst temporarily at **premises** not occupied by **you** or whilst in transit by road, rail or inland waterway anywhere within the **United Kingdom** provided that **our** liability under this clause shall not exceed ten (10%) percent of the **sum insured** by this **section** or £50,000 whichever is the greater.

12.2.4 Denial of access

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1, to property in the vicinity of the **premises** which shall prevent or hinder the use of the **premises** or access thereto whether the **premises** or **your** property therein shall be **damaged** or not (but excluding **damage** to property of any supply undertaking from which **you** obtain electricity, gas or water or telecommunications services which prevents or hinders the supply of such services).

12.2.5 Murder, suicide or disease

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1, arising from:

- a) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) an outbreak of which the local authority has stipulated shall be notified to them manifested by any person whilst in the **premises** or within a twenty five (25) mile radius of it;
- b) murder or suicide in the **premises**;
- c) **bodily injury** or illness sustained by any person arising from or traceable to foreign or injurious matter in food or drink provided in the **premises**;
- d) vermin or pests in the **premises**;
- e) the closing of the whole or part of the **premises** by order of a competent public authority consequent upon defect in the drains or other sanitary arrangements at the **premises**.

The insurance by this clause shall only apply for the period beginning with the occurrence of the loss and ending not later than three (3) months thereafter during which the results of the **business** shall be affected in consequence of the **damage**.

12.2.6 Professional accountants charges

We shall indemnify **you** in respect of reasonable charges payable by **you** to **your** professional accountants for producing any particulars or details contained in **your** business books or such other proofs information or evidence as **we** may require under the terms of the Claims procedure herein and reporting that such particulars or details are in accordance with **your** business books or documents.

12.2.7 **Suppliers**

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1, at any **premises** of any of **your** suppliers within the **United Kingdom**, provided that **our** liability under this clause shall not exceed ten (10%) percent of the **sum insured** by this **section** or £50,000 whichever is the greater.

12.2.8 **Supply utilities**

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1, at giving rise to **damage** to property at any:

- a) generating station or sub-station of the public electricity supply undertaking;
- b) land based **premises** of the public gas supply undertaking or of any natural gas producer linked directly therewith;
- c) water works and pumping stations of the public water supply undertaking;
- d) land based **premises** of the public telecommunications undertaking;

from which **you** obtains electricity, gas, water or telecommunication services within the **United Kingdom** provided that **our** liability under this clause shall not exceed ten (10%) percent of the **sum insured** by this **section** or £50,000 whichever is the greater.

12.2.9 **Unspecified customers**

We shall indemnify **you** in respect of interruption of or interference with the **business** caused by **damage**, as defined in clause 12.1 where property is stored at the premises of any of the **insured's** customers' but excluding:

- a) customers specified by a more specific clause by this **section**;
- b) the premises from which the **insured** obtains electricity, gas, water or telecommunication services;
- c) premises outside the **United Kingdom** or **Eire**;

provided that **our** liability under this clause shall not exceed ten (10%) percent of the **sum insured** by this **section** or £50,000 whichever is the greater.

12.2.10 **Value Added Tax**

To the extent that **you are** accountable to the tax authorities for Value Added Tax all terms in this **section** shall be exclusive of such tax.

12.3 **Book debts**

12.3.1 In the event of any of **your** books of account or other business books or records at the **premises** up to a sum insured of £5,000 being **damaged** by:

- a) an insured peril under Clause 9.2 or 10.2;
- b) glass breakage;

so as to render it impossible for **you** to obtain from **customers** all the sums due to them and outstanding at the date of the **damage** and for which payment shall have been made or liability admitted by an insurer under any insurance covering **your** interest in the property **damaged** then;

12.3.2 **we** shall indemnify **you** in respect of loss of **book debts** by paying:

- a) the difference solely due to the **damage** between the amount of the **book debts** at the date of the **damage** and the total amount received in payment of them during the twelve (12) months after the **damage**;
- b) any reasonable expenditure incurred in avoiding or diminishing the loss of **book debts** but not more than the loss avoided

provided that **our** maximum amount payable under this clause shall not exceed £5,000 any one loss.

12.3.3 The indemnity provided under this clause shall be void if the **business** be wound up or carried on by a liquidator or receiver or permanently discontinued without **our** consent.

12.3.4 No claim shall be payable unless **you**:

- a) take all action which may be reasonably practicable to minimise or check any interruption or interference with the **business** or to avoid or diminish the loss;
- b) at **your** own expense deliver to **us** in writing a statement setting forth particulars of **your** claim.

12.4 Business interruption - Exclusions

The insurance by this **section** excludes and does not insure:

12.4.1 **damage** arising from deliberate erasure loss distortion or corruption of information on computer systems or other records programs or software;

12.4.2 **damage** directly or indirectly caused by or arising from any programming or operator error **computer virus** or **hacking** including where this results from the actions of malicious persons other than thieves;

12.4.3 mislaying or misfiling of records and tapes;

12.4.4 the deliberate act of the supply undertaking in restricting or withholding electricity supply;

12.4.5 subject to the provisions of the Automatic reinstatement of sum insured clause and Professional accountants charges clause, any amount in excess of the **sum insured** shown in the **schedule** that is the maximum amount **we** are liable to pay during any one **period of insurance**. For the avoidance of doubt professional accounts charges are payable in addition to the **sum insured**.

12.4.6 any payment beyond the **indemnity period** shown on the **schedule**.

13 Section J - Terrorism

13.1 Terrorism coverage

Where **section J** is shown in the schedule as 'operative' **we** will indemnify **you** for **damage** to the property insured and consequential loss resulting therefrom insofar and to the extent that:

- 13.1.1 it is insured in Great Britain (meaning England and Wales and Scotland but not the territorial seas adjacent thereto as defined by the Territorial Seas Act 1987 nor the Isle of Man nor the Channel Islands);
- 13.1.2 occasioned by or happening through or in consequence of any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrowing or influencing of any government de jure or de facto by force or violence;
- 13.1.3 such act is certified by HM Treasury or a competent tribunal as an act of **terrorism**
- 13.1.4 provided that in any action suit or other proceedings where **we** allege that any **damage, costs and expenses** are not covered by this insurance **you** shall have the burden of proving the contrary; and
- 13.1.5 this **section J** excludes and will not cover:
 - a) chemical biological or radioactive contamination defined as any loss whatsoever or any expenditure resulting or arising therefrom or any consequential loss directly or indirectly caused by or contributed to by or arising from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its nuclear component thereof, ionising radiation or contamination by radioactivity or from the combustion of any radioactive material, chemical and or biological and or radiological irritants contaminants or pollutants, in respect only of residential property houses and blocks of flats and other dwellings insured in the name of a private individual;
 - b) war and allied risks as defined as war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power;
 - c) digital or cyber risks, that is any loss whatsoever directly or indirectly caused by or contributed to by or arising from or occasioned by or resulting from **damage** to any computer or other equipment or component or system or item which processes stores transmits or receives data or any part thereof whether tangible or intangible (including but without limitation any information or programs or software) and whether **your** property or not, where such **damage** is caused by **computer virus** or **hacking** or **denial of service attack**, or consequential loss directly or indirectly caused by or arising from **computer virus** or **hacking** or **denial of service attack**.
 - d) **Our** liability in respect of all losses arising out of any one occurrence and in the aggregate in any one **period of insurance** is limited to, and will not exceed, the **sum insured** otherwise specified in **sections G, H and I**.

13.2 Other terrorism terms and conditions

13.2.1 Cancellation

We may cancel **section J** by giving **you** written notice at the address shown on the schedule cancelling this **section** with effect from the twenty first (21st) day after the notice has been served. 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.

13.2.2 **Restricted terms**

The insurance by this **section J** is subject otherwise to all the terms and conditions of this **policy** except that any:

- a) Long Term Undertaking;
- b) terms which provide for adjustments of premium based upon declarations on expiry or during the **period of insurance**;
- c) coverage in respect of **premises** to locations outside England and Wales and Scotland;

will not apply to losses covered under this **section J**.

14 Section K - Employers liability

14.1 Employers' liability coverage

We will indemnify **you** against all sums that **you** shall become legally liable to pay as damages, including claimant costs recoverable from **you**, arising out of **bodily injury** caused during the **period of insurance** to an **employee** who, at the time of the cause, was working for **you** in the course of employment by **you** in **your business** within the **territorial limits**.

14.1.1 Following any event which is or may be the subject of indemnity under this **section** whether or not **bodily injury** has occurred **we** agree to indemnify **you** for **defence costs** but such **defence costs** form part of the **limit of indemnity** and do not increase the **limit of indemnity** or any **sub-limit of indemnity**

14.1.2 Limit of Indemnity

Our liability under this **section** for damages including **defence costs** payable in respect of any one claim against **you** or series of claims against **you** arising out of one occurrence shall not exceed the amount stated as the **limit of indemnity** in the **schedule**.

14.1.3 Right of recovery

The indemnity granted by **section K** is deemed to be in accordance with the provisions of the Employers' Liability (Compulsory Insurance) Act 1969 and the Employers Liability (Compulsory Insurance) Regulations 1998 or any subsequent amendment or re-enactment or similar legislation in Northern Ireland, the Isle of Man and the Channel Islands.

Where any condition precedent, exclusion, term or condition of this **section** is deemed prohibited by the act or regulations, then **we** will provide an indemnity to the **employee** under the terms of **section K** but **you** will repay to **us** that part of **our** indemnity for which **we** would not otherwise have been liable under this **section** by reason of any such breach of condition precedent, term, condition or exclusion.

14.2 Employers' liability - Cover extensions

This **section** shall extend to include the following:

14.2.1 Additional persons insured

- a) In the event of the death of any person entitled to indemnity under this **section**, **we** will indemnify in the terms of this **policy** the deceased's legal personal representatives but only in respect of liability incurred by such deceased person;
- b) At **your** request **we** will indemnify in the terms of this **section**:
 - i) any principal in respect of liability arising out of the performance by **you** of any agreement entered into by **you** with the principal to the extent required by such agreement;
 - ii) any director of **yours** or **employee** in respect of liability arising in connection with the **business** provided that **you** would have been entitled to indemnity under the **section** if the claim had been made against **you**;
 - iii) any officer, committee or member of **your** canteen, sports, social or welfare organisations, fire security, first aid, medical or ambulance services in their respective capacities as such;
 - iv) any director or senior official of **yours** in respect of private work undertaken by any **employee** for such director or senior official;

provided that:

- l) each person shall as though he were the **insured** observe fulfil and be subject to the terms of this **policy** insofar as they can apply;

II) **we** shall retain the sole conduct and control of all claims.

14.2.2 **Compensation for court attendance**

In the event of any of the under-mentioned persons attending court as a witness at **our** request in connection with a claim in respect of which **you** are entitled to indemnity under this **section**, **we** shall provide compensation to **you** at the following rates per day for each day on which attendance is required for:

- | | |
|---|------|
| a) any of your directors or partners | £500 |
| b) any employee | £250 |

14.2.3 **Contractual liability**

Where any contract or agreement entered into by **you** so requires **we** will:

- a) indemnify **you** against liability arising in connection with and assumed by **you** by virtue of such contract or agreement but only so far as concerns liability as defined in this **section** to **your employees**; and
- b) waive rights of subrogation against any party specified in the contract or agreement; provided that:
 - i) **you** shall arrange for such other parties as may be indemnified by any such contract or agreement, to observe and fulfil the terms and conditions of this insurance so far as they can apply;
 - ii) **we** shall retain the sole conduct and control of all claims.

14.2.4 **Cross liabilities**

If more than one **insured** is referred to in the **policy** schedule this **section** shall apply to each one as if a separate **policy** had been issued to each provided that the total amount of indemnity payable to all parties in respect of damages shall not exceed the **limit of indemnity**.

14.2.5 **Data Protection Act 1998**

We will indemnify **you** and if **you** so require any **employee** in respect of their liability under the Data Protection Act 1998 ('DPA') to pay:

- a) compensation in respect of **damage** or distress under section 13 of Part II of the DPA including defence **costs and expenses**;
- b) defence costs in relation to a prosecution brought under section 21 of Part III of the DPA in relation to claims made by an **employee**, provided that:
 - i) **you** have registered in accordance with the terms of the DPA;
 - ii) the claim arises from damage or distress caused or prosecution commenced during the **period of insurance**;
 - iii) this extension will not apply in respect of:
 - I) the cost of replacing, reinstating, rectifying or erasing any personal data;
 - II) liability caused by or arising from a deliberate or intentional act by or omission of any party entitled to indemnity by this insurance the effect of which will knowingly result in liability under the DPA;
 - III) claims which arise out of circumstances notified to any previous insurer or known to **you** at inception of this **policy**;
 - IV) liability for which indemnity is provided under any other insurance.

14.2.6 **Statutory defence costs including Health and Safety At Work, Etc. Act 1974**

We will, with **our** prior consent, indemnify **you** and at **your** request any additional persons insured, in respect of legal **defence costs** incurred in defending:

- a) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and / or

- b) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against **you** or any additional persons insured;

provided that the prosecution or proceedings relate to:

- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**;
- ii) **bodily injury** to, or potential **bodily injury** to **employees** including their health, safety and welfare;

We will also pay **you**:

- c) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with **our** prior written consent;
- d) prosecution costs awarded against **you**;

but the indemnity by this clause excludes and does not cover:

- i) circumstances where **you** or any additional persons insured are entitled to indemnity by any other legal expenses, motor or employment protection policy;
- ii) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide, any amount in excess of a **limit of indemnity** of £1,000,000 any one claim or series of claims arising out of the same prosecution or proceedings.

14.2.7 **Unsatisfied court judgments**

In the event of **bodily injury** caused during the **period of insurance**, within the **territorial limits** and sustained by an **employee** in the course of employment by **you** in the course of the **business** which results in a judgement for damages being obtained by such **employee** or his personal representatives and which remains unsatisfied in whole or in part six (6) months after the date of such judgement, **we** will at **your** request pay to the **employee** or his personal representatives the amount of any such damages and any awarded costs to the extent that they remain unsatisfied provided that:

- a) the judgement for damages is obtained
 - i) in a court of law within the **United Kingdom**;
 - ii) against a company partnership or individual other than **you** conducting **business** at or from **premises** within the European Economic Area;
- b) there is no appeal outstanding;
- c) the judgement relates to **bodily injury** which would otherwise be within the terms of the **policy**;
- d) if any payment is made under the terms of this extension the **employee** or the personal representatives of the **employee** shall assign the judgment to **us**.

14.3 **Employers' liability - Exclusions**

14.3.1 **North American jurisdiction**

This **section** excludes and does not cover liability, expenses, costs or **defence costs**, in respect of any proceedings (including arbitration or regulatory proceedings), judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) to:

- a) any party incorporated, domiciled or resident in **North America**;
- b) pay any sum in excess of a **limit of indemnity** which sum shall be the maximum amount payable including any **defence costs** recoverable hereunder;
- c) pay punitive, multiple or exemplary damages.

14.3.2 **Nuclear risks**

So far as concerns the liability of any principal or liability assumed by **you** under agreement and which would not have attached in the absence of such agreement this

section excludes and does not cover liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

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

14.3.3 **Offshore work**

This **section** excludes and does not cover liability arising from or caused by work **offshore**.

14.3.4 **Vehicles**

This **section** excludes and does not cover liability for **bodily injury** sustained by an **employee** when the **employee** is:

- a) being carried in or upon a vehicle; or
- b) entering or getting onto or alighting from a vehicle

in circumstances where insurance or security is required to be effected by the **insured** to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil liability in respect of the use of motor vehicles;

15 Section L - Public and products liability

15.1 Public and products liability coverage

15.1.1 **We** will indemnify **you** against all sums that **you** shall become legally liable to pay as damages and claimant's cost in respect of accidental:

- a) **bodily injury** to any person;
- b) **damage** to tangible property;
- c) obstruction, trespass, nuisance or interference with any right of way air, light or water or other easement;
- d) wrongful arrest detention imprisonment or eviction of any person or invasion of the right of privacy

occurring during the **period of insurance**

- i) within the **territorial limits**;
- ii) in the course of the **business**; or
- iii) caused by the **products**.

15.1.2 **Pollution coverage**

Further **we** will indemnify **you** against all sums that **you** shall become legally liable to pay as damages and claimant's cost in respect of accidental:

- a) **bodily injury** to any person;
- b) **damage** to tangible property;
- c) denial of access;

arising out of or from **pollution** occurring during the course of **business** provided that the **pollution** is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**.

15.1.3 **Limit of indemnity**

Our liability for all damages payable to any claimant or number of claimants as a result of any one occurrence or all occurrences of a series consequent upon or attributable to one source or original cause shall not exceed the **limit of indemnity** stated in the schedule but this **limit of indemnity** shall be the maximum amount payable in any one **period of insurance** in respect of liability arising from or caused by:

- a) **products**; or
- b) **pollution**

For the avoidance of doubt **defence costs** are payable in addition to the **limit of indemnity** except as provided for in the North America clause under.

15.1.4 **North America**

Insofar as this **policy** applies to legal liability arising in **North America** or if an action for damages is commenced therein or if any subsequent action in connection therewith is brought elsewhere in the world **our** liability in respect of all damages payable, claimant's costs and all other **defence costs** incurred with **our** prior written consent, shall not exceed the **limit of indemnity**;

15.2 Public and products liability - Cover extensions

15.2.1 Additional persons insured

- a) In the event of the death of any person entitled to indemnity under this **section**, **we** will indemnify in the terms of this **policy** the deceased's legal personal representatives but only in respect of liability incurred by such deceased person;
- b) At **your** request **we** will indemnify in the terms of this **section**:
 - i) any principal in respect of liability arising out of the performance by **you** of any agreement entered into by **you** with the principal to the extent required by such agreement;
 - ii) any director of **yours** or **employee** in respect of liability arising in connection with the **business**, provided that **you** would have been entitled to indemnity under the **section** if the claim had been made against **you**;
 - iii) any officer, committee or member of **your** canteen, sports, social or welfare organisations, fire, security, first aid, medical or ambulance services in their respective capacities as such;
 - iv) any director or senior official of **yours** in respect of private work undertaken by any **employee** for such director or senior official

provided that:

- I. each person indemnified by this clause shall as though he were insured observe fulfil and be subject to the terms of this **policy** insofar as they can apply;
- II. **we** shall retain the sole conduct and control of all claims;
- III. where **we** are required to indemnify more than one party the total amount of indemnity payable to all parties in respect of damages shall not exceed the **limit of indemnity**.

15.2.2 Compensation for court attendance

In the event of any of the under-mentioned persons attending court as a witness at **our** request in connection with a claim in respect of which **you** are entitled to indemnity under this **section**, **we** shall provide compensation to **you** at the following rates per day for each day on which attendance is required:

- a) any of **your** directors or partners £500
- b) any **employee** £250

15.2.3 Contingent motor liability

Notwithstanding exclusion at 15.3 d) of this **section**, **we** shall indemnify **you** against legal liability in respect of **bodily injury** or **damage** arising out of the use in connection with the **business** of any motor vehicle not owned or provided by **you**.

The indemnity will not apply to legal liability:

- a) in respect of **damage** to such vehicle or to goods conveyed therein or thereon;
- b) in respect of **bodily injury** or **damage** arising while such vehicle is being:
 - i) driven by **you**;
 - ii) driven with **your** general consent or of **your** representative by any person who to **your** knowledge or **your** representative knowledge does not hold a licence to drive a vehicle unless such person has held and is not disqualified from holding such a licence;
 - iii) used elsewhere than in the **United Kingdom**;
- c) in respect of which **you** are entitled to indemnity under any other insurance.

15.2.4 **Contractual liability**

Where any contract or agreement entered into by **you** so requires **we** will:

a) indemnify **you** against liability arising in connection with and assumed by **you** by virtue of such contract or agreement but only so far as concerns liability as defined in this **section**; and

b) waive rights of subrogation against any party specified in the contract or agreement;

provided that:

i) **you** shall arrange for such other parties as may be indemnified by any such contract or agreement, to observe and fulfil the terms and conditions of this insurance so far as they can apply;

ii) **we** shall retain the sole conduct and control of all claims.

15.2.5 **Cross liabilities**

If more than one **insured** is referred to in the **policy** schedule this **section** shall apply to each one as if a separate **policy** had been issued to each provided that the total amount of indemnity payable to all parties in respect of damages shall not exceed the **limit of indemnity**.

15.2.6 **Data Protection Act 1998**

We will indemnify **you** and if **you** so require any employee in respect of their liability under the Data Protection Act 1998 ('DPA') to pay:

a) compensation in respect of damage or distress under section 13 of Part II of the DPA including defence **costs and expenses**;

b) defence costs in relation to a prosecution brought under section 21 of Part III of the DPA;

c) in relation to claims made by an employee, provided that:

i) **you** have registered in accordance with the terms of the DPA;

ii) the claim arises from damage or distress caused or prosecution commenced during the **period of insurance**;

iii) this extension will not apply in respect of:

I. the cost of replacing, reinstating, rectifying or erasing any personal data;

II. liability caused by or arising from a deliberate or intentional act by or omission of any party entitled to indemnity by this insurance the effect of which will knowingly result in liability under the DPA;

III. claims which arise out of circumstances notified to any previous insurer or known to **you** at inception of this **policy**;

IV. liability for which indemnity is provided under any other insurance.

15.2.7 **Defective premises Act**

We will indemnify **you** in respect of **bodily injury** or **damage** to property which **you** may incur as owner by virtue of the Defective Premises Act 1972 in connection with any premises which have been disposed of by **you** and which prior to disposal were occupied by **you** in connection with the **business**, provided that **we** shall not be liable for:

a) any liability for which **you** are entitled to indemnity under any other policy of insurance;

b) **bodily injury** or **damage** happening prior to such disposal;

c) the cost of repairing, replacing or reinstating any defect giving rise to such claim or for the rectification of faulty workmanship.

15.2.8 **Overseas personal liability**

We shall indemnify **you** and if **you** so request any director or partner of **yours** or any **employee** or spouse of such person against legal liability incurred in a personal capacity whilst temporarily outside the **United Kingdom** in the course of the **business**.

The indemnity provided by this clause will not apply to legal liability:

- a) arising out of the ownership or occupation of land or buildings;
- b) in respect of which any person referred to above is entitled to indemnity under any other insurance.

15.2.9 **Statutory defence costs including Health and Safety At Work, Etc. Act 1974**

We will, with **our** prior consent, indemnify **you** and at **your** request any additional persons insured, in respect of legal **defence costs** incurred in defending:

- a) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and / or
- b) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against **you** or any additional persons insured;

provided that the prosecution or proceedings relate to:

- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**;
- ii) **bodily injury** to, or potential **bodily injury** to persons other than **employees** including their health, safety and welfare;

We will also pay **you**:

- c) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with **our** prior written consent;
- d) prosecution costs awarded against **you**;

but the indemnity by this clause excludes and does not cover:

- i) circumstances where **you** or any additional persons insured are entitled to indemnity by any other legal expenses, motor or employment protection policy;
- ii) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide, any amount in excess of a **limit of indemnity** of £1,000,000 any one claim or series of claims arising out of the same prosecution or proceedings.

For the avoidance of doubt the under noted statutes, whilst not exhaustive, are included within the statutes or regulations contemplated for which defence costs are insured by this clause:

- I. Health and Safety at Work, etc. Act 1974, but only sections 2 to 8,
- II. Health and Safety at Work (Northern Ireland) Order 1978,
- III. The Trade Description Act 1968
- IV. Part II of the Consumer Protection Act 1987
- V. Part II of the Food Safety Act 1990.

15.2.10 **Tenants liability**

If the **premises** are leased, let, rented, hired or lent to **you**, exclusion 15.3 b) ii) of this **section** shall not apply provided that the indemnity will not apply to legal liability in respect of:

- a) **damage** arising under agreement unless liability would have attached to **you** in the absence of such agreement;
- b) **damage** caused by fire or any other peril against which a tenancy or other agreement stipulates that insurance shall be effected by or on **your** behalf.

In addition **we** will indemnify **you** for legal liability in respect of all sums which **you** may be legally liable to pay as tenant for the cost of repairing accidental **damage** to cables

and underground pipes and drains (and their inspection covers) on the **premises** or connecting them to the public mains.

15.3 Public and products liability - Exclusions

The insurance by this **section** excludes and does not cover liability for any claim in respect of:

Public liability

- a) liability arising from **bodily injury, damage** or nuisance arising out of or from or:
 - i) brought about by or contributed to by **pollution**;
 - ii) in connection with a **product**;

Products liability

- b) liability arising from any **product** or part thereof which, with the **insured's** knowledge, is intended to be incorporated into the structure, machinery or controls of any aircraft or other aerial device or satellite;
- c) liability arising out of or from or brought about by or contributed to by **pollution**;

Pollution liability

- d) liability for **damage** or nuisance to land or **premises** (including land or water within or below the boundaries of such land or **premises**) that are presently or were at any time previously owned, leased, hired or tenanted by the **insured** or otherwise in the **insured's** care, custody or control;
- e) liability for **bodily injury, damage** or nuisance arising out of or from pollution in **North America**;

Public, Products and Pollution liability

- f) **bodily injury** to any **employee**;
- g) **damage** to:
 - i) property belonging to **you**;
 - ii) property which is leased let rented hired or lent to or which is the subject of a bailment to **you** or otherwise held in **your** custody, care and control;
- h) the costs of remedying any defect or alleged defect in land or **premises** sold or disposed of by **you** or for any reduction in value thereof;
- i) the ownership possession or use by or on **your** behalf of any craft (air or waterborne) or mechanically-propelled vehicles (including power assisted cycles) other than mechanically-propelled garden implements used within the grounds of the **premises**;
- j) work on **offshore** installations;
- k) liability arising out of or from advice, design, plans, specifications, formulae, surveys or directions prepared or given by **you** for a fee but this shall not exclude such liability arising in conjunction with **products** supplied;
- l) any action for damages brought in a Court of Law of any territory outside the **United Kingdom** in which **you** have a branch or subsidiary or is represented by a party domiciled in such territory or by a party holding **your** Power of Attorney;
- m) legal liability which attaches by virtue of an express warranty indemnity or guarantee given or entered into by **you** in connection with any **products** supplied and which would not have attached in the absence of such warranty or guarantee;
- n) **bodily injury, damage** or **pollution** caused by or in connection with anything sold or supplied by **you** or which to **your** knowledge are directly or indirectly exported to the **North America**;
- o) liquidated damages, fines or penalties, punitive damages, aggravated damages, any additional damages resulting from the multiplication of compensatory damages;

- p) anything (other than the **products**) that **you** have sold or supplied;
- q) or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust, or asbestos containing materials.

15.4 Other Public and products liability terms and conditions

15.4.1 Discharge of liability

We may pay the **limit of indemnity** or any lesser amount for which any claim or claims against **you** can be settled and **we** shall be under no further liability in respect of such claim or claims except for costs or expenses incurred prior to the date of such payment.

16 Section M - Legal expenses

16.1 Legal expenses cover

16.1.1 This **section** will cover the **person insured** in respect of any insured incident arising in connection with the **business** shown in the **schedule** provided that:

- a) **reasonable prospects** exist for the duration of the claim;
- b) the **date of occurrence** of the insured incident is during the **period of insurance**;
- c) any legal proceedings will be dealt with by a court, or other body which **we** agree to, within the **territorial limits**; and
- d) the insured incident happens within the **territorial limits**.

For the purpose of this **section** 'insured incident' refers to the indemnity provided by:

- I) Employment dispute and compensation awards
- II) Legal defence
- III) Statutory licence appeal
- IV) Property protection and bodily injury
- V) Tax protection
- VI) Contract disputes

as describe more fully under.

16.1.2 What we will pay

We will pay an **appointed representative**, on **your** behalf, **legal expenses costs** incurred following an insured incident, and any compensation awards that **we** have agreed to, provided that:

- a) the most **we** will pay for all claims resulting from one or more event arising at the same time or from the same originating cause is shown as the limit of indemnity in the **schedule**;
- b) the most **we** will pay in **legal expenses costs** is no more than the amount **we** would have paid to a **preferred law firm or tax consultancy**;
- c) in respect of an appeal or the defence of an appeal, **you** must tell **us** within the time limits allowed that **you** want to appeal. Before **we** pay the **legal expenses costs** for appeals, **we** must agree that **reasonable prospects** exist;
- d) for an enforcement of judgment to recover money and interest due to **you** after a successful claim under this policy, **we** must agree that **reasonable prospects** exist; and
- e) where an award of damages is the only legal remedy to a dispute and the cost of pursuing legal action is likely to be more than any award of damages, the most **we** will pay in **legal expenses costs** is the value of the likely award;
- f) in respect of insured incident – Legal defence the maximum **we** will pay is the **person insured's** net salary or wages for the time that the **person insured** is absent from work less any amount the court pays.

16.1.3 What we will not pay

- a) In the event of a claim, if **you** decide not to use the services of a **preferred law firm or tax consultancy**, **you** will be responsible for any costs that fall outside the **DAS standard terms of appointment** and these will not be paid by **us**.
- b) The total of the compensation awards payable by **us** shall not exceed £1,000,000 in any one **period of insurance**.

16.2 Employment disputes and compensation awards

16.2.1 Employment disputes

We will defend **your** legal rights:

- a) prior to the issue of legal proceedings in a court or tribunal following the dismissal of an **employee**; or
- b) in the resolution of unfair dismissal disputes under the ACAS Arbitration Scheme; or
- c) in legal proceedings in respect of any dispute relating to:
 - i) a contract of employment with **you**; or
 - ii) an alleged breach of the statutory rights of an **employee**, prospective **employee** or ex-**employee** under employment legislation.

16.2.2 Compensation awards

We will pay:

- a) any basic and compensatory award; and/or
- b) an order for compensation following a breach of **your** statutory duties under employment legislation;

in respect of a claim **we** have accepted under clause 16 provided that:

- c) in cases relating to performance and/or conduct, **you** have throughout the employment dispute either:
 - i) followed the ACAS Code of Disciplinary and Grievance Procedures; or
 - ii) followed equivalent codes of practice issued by the labour relations agency in Northern Ireland; or
 - iii) sought and followed advice from **our** legal advice service.
- d) for an order of compensation following **your** breach of statutory duty under employment legislation **you** have at all times sought and followed advice from **our** legal advice service since the date when **you** should have known about the employment dispute.
- e) for any compensation award for redundancy or alleged redundancy or unfair selection for redundancy, **you** have sought and followed advice from **our** claims department prior to serving notice of redundancy.
- f) the compensation is awarded by a tribunal or through the ACAS Arbitration Scheme, under a judgment made after full argument and otherwise than by consent or default, or is payable under settlement approved in writing in advance by **us**.
- g) the total of the compensation awards payable by **us** shall not exceed £1,000,000 in any one **period of insurance**.

16.2.3 Employee civil legal defence

We will defend the **person insured's** (other than **your**) legal rights if:

- a) an event arising from their work as an **employee** leads to civil action being taken against them under legislation for unlawful discrimination; or
- b) civil action is taken against them as a trustee of a pension fund set up for the benefit of **your employees**.

*Please note that **we** will only provide cover for a **person insured** (other than **you**) at **your** request.*

16.2.4 Service Occupancy

We will negotiate for **your** legal rights against an **employee** or ex-**employee** to recover possession of premises owned by, or for which **you** are responsible.

16.3 Legal defence

At **your** request

16.3.1 **We** will defend the **person insured's** legal rights:

- a) prior to the issue of legal proceedings when dealing with the:
 - i) police;
 - ii) health and safety executive and/or local authority health and safety officer;

where it is alleged that the **person insured** has or may have a criminal offence; or

- b) following an event which leads to the **person insured** being prosecuted in a court of criminal jurisdiction (please note **we** will only cover criminal investigations and/or prosecutions which arise in direct connection with the activities of the **business** shown in the **schedule**); or
- c) if civil action is taken against the **person insured** for compensation under section 13 of the Data Protection Act 1998. **We** will also pay any compensation award made against the **person insured** under section 13 of the Data Protection Act 1998; or
- d) in an appeal against the refusal of the Information Commissioner to register **your** application for registration.

16.3.2 **We** will defend **your** legal rights following civil action taken against **you** for wrongful arrest in respect of an accusation of theft alleged to have been carried out during the **period of insurance**.

16.3.3 **We** will represent the **person insured** in appealing against the imposition or terms of any statutory notice issued under legislation affecting **your business** except for any claim in connection with **your** license, mandatory registration or British Standard Certificate of Registration, or a Statutory Notice issued by a **person insured's** regulatory or governing body.

16.3.4 **We** will pay for a **person insured's** absence from work:

- a) to perform jury service
- b) to attend any court or tribunal at the request of the **appointed representative**.

The maximum **we** will pay is the **person insured's** net salary or wages for the time that they are absent from work less any amount **you** the court or tribunal, have paid them.

Provided that:

- c) in so far as proceedings under the Health and Safety at Work etc Act 1974 are concerned, in respect of clause 16.3.4 a) and b) the **territorial limit** shall be any place where the act applies;
- d) in respect of clause 16.3.4 c), at the time of the insured incident **you** have registered with the information commissioner.

16.4 Statutory licence appeal

We will represent **you** in appealing to the relevant statutory or regulatory authority, court or tribunal following a decision by a licensing or regulatory authority to suspend, or alter the terms of, or refuse to renew, or cancel **your** licence, mandatory registration or British standard certificate of registration.

16.5 Property protection and bodily injury

16.5.1 Property protection

We will negotiate for **your** legal rights in any civil action relating to material property which is owned by **you**, or is **your** responsibility, following:

- a) any event which causes physical damage to such material property; or
- b) a legal nuisance (meaning any unlawful interference with **your** use or enjoyment of **your** land, or some right over, or in connection with it); or
- c) a trespass.

*Please note that **you** must have established the legal ownership or right to the land that is the subject of the dispute.*

16.5.2 Bodily injury

At **your** request, **we** will negotiate for a **person insured's** and their family members' legal rights following a specific or sudden accident that causes the death of, or bodily injury to them.

16.6 Tax protection

16.6.1 A full enquiry or aspect enquiry.

16.6.2 A cross-tax enquiry.

16.6.3 An employer compliance dispute.

16.6.4 A VAT dispute.

Provided that:

- a) **you** have taken reasonable care to ensure that all returns are complete and correct and are submitted within the statutory time limits allowed; and
- b) **we** will not pay more than £2,000 for claims in respect of **aspect enquiries**.

*Please note **we** will only cover tax claims which arise in direct connection with the activities of the **business** shown in the **schedule**.*

16.7 Contract disputes

We will negotiate for **your** legal rights in a contractual dispute arising from that agreement or that alleged agreement which has been entered into by you or on your behalf for the purchase, hire, sale or provision of goods or of services provided that:

- a) the amount in dispute exceeds £500 (including VAT). If the amount in dispute exceeds £5,000, **you** will be responsible for the first £500 of **legal costs** in each and every dispute.
- b) if the amount in dispute is payable in instalments, the instalments due and payable at the time of making the claim exceed £500.
- c) if the dispute relates to money owed to **you**, a claim under this **section** is made within ninety (90) days of the money becoming due and payable.

16.8 Specific Legal expenses limitations and exclusions

This **section** excludes and does not cover:

16.8.1 Employment disputes and compensation awards

a) Employment disputes

- i) A dispute where the cause of action arises within the first ninety (90) days of the start of the cover provided by this **section**.
- ii) A dispute with an **employee** under a written or oral warning (formal or informal) within one hundred and eighty (180) days immediately before the start of the cover provided by this **section** if the **date of occurrence** was within the first one hundred and eighty (180) days of the start of the cover provided by this **section**.
- iii) Any redundancy or alleged redundancy or unfair selection for redundancy arising within the first one hundred and eighty (180) days of the start of the cover provided by this **section**.
- iv) Any claim in respect of damages for personal injury or loss of or damage to property.
- v) Any claim arising from or relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Transfer of Employment (Pension Protection) Regulations 2005.

b) Compensation awards

- i) Any compensation award relating to the following:
 - I) trade union activities, trade union membership or non-membership;
 - II) pregnancy or maternity rights, paternity, parental or adoption rights;
 - III) health and safety related dismissals brought under section 44 of the Employment Rights Act 1996;
 - IV) statutory rights in relation to trustees of occupational pension schemes;
- ii) Non-payment of money due under the relevant contract of employment or statutory provision relating thereto.
- iii) Any award ordered because **you** have failed to provide relevant records to **employees** under the National Minimum Wage laws.
- iv) Any compensation award or increase in compensation award ordered by the tribunal for failure to comply with a current or previous recommendation it has made.

c) Service occupancy

Any claim relating to defending **your** legal rights other than defending a counter-claim.

16.8.2 Legal defence

- a) Any claim which leads to the **person insured** being prosecuted for infringement of road traffic laws or regulations in connection with the ownership, driving or use of a motor vehicle.
- b) the cost of fines imposed by the Information Commissioner.

16.8.3 Statutory licence appeal

- a) Assistance with the application process either in relation to an original application or application for renewal of a statutory licence, mandatory registration or British standard certificate of registration.
- b) Any licence appeal relating to the ownership, driving or use of a motor vehicle.

16.8.4 Property protection and bodily injury

a) Property Protection

Any claim relating to the following:

- a) a contract entered into by **you**;
- b) goods in transit or goods lent or hired out;
- c) goods at premises other than those occupied by **you** unless the goods are at such premises for the purpose of installations or use in work to be carried out by **you**;
- d) mining subsidence;
- e) defending **your** legal rights other than in defending a counter-claim;
- f) a motor vehicle owned or used by, or hired or leased to a **person insured** other than damage to motor vehicles where **you** are engaged in the business of selling motor vehicles.
- g) the enforcement of a covenant by or against **you**.

b) Bodily injury

Any claim relating to the following:

- i) any illness or bodily injury which develops gradually or is not caused by a specific or sudden accident; or
- ii) defending a **person insured's** or their family members' legal rights other than in defending a counter-claim; or
- iii) clinical negligence
- iv) psychological injury or mental illness unless the condition follows a specific or sudden accident that has caused physical bodily injury.

16.8.5 Tax protection

- a) **We** will not pay the first £200 of **legal expenses costs** of each and every claim in respect of **aspect enquiries**.
- b) Any tax avoidance schemes.
- c) Any failure to register for Value Added Tax or Pay as You Earn.

- d) Any investigation or enquiries by, with or on behalf of HM Revenue & Customs Special Investigations Section, Special Civil Investigations, Criminal Investigations Unit, Criminal Taxes Unit, under Public Notice 160 or by the Revenue & Customs Prosecution Office.
- e) Any claim relating to import or excise duties and import VAT.
- f) Any investigation or enquiry by HM Revenue & Customs into alleged dishonesty or alleged criminal offences.

16.8.6 Contract disputes

- a) a dispute arising from an agreement entered into prior to the start of the **policy** if the date of occurrence is within the first 90 days of the cover provided by the **policy**.
- b)
 - i) the settlement payable under an insurance policy (we will cover a dispute if your insurer refuses your claim, but not for a dispute over the amount of the claim).
 - ii) The sale, purchase, terms of a lease, licence, or tenancy of land or buildings.

However, **we** will cover a dispute with a professional adviser in connection with these matters.

- iii) a loan, mortgage, pension, guarantee or any other financial product and choses in action.
 - iv) a motor vehicle owned by, or hired or leased to **you** other than agreements relating to the sale of motor vehicles where **you** are engaged in the business of selling motor vehicles.
- c) a dispute with an **employee** or ex-**employee** which arises out of, or relates to, a contract of employment with **you**.
- d) a dispute which arises out of the:
 - i) sale or provision of computer hardware,
 - ii) software, systems or services; or
 - iii) the purchase or hire of computer hardware, software, systems or services tailored by a supplier to your own specification.
- e) a dispute arising from a breach or alleged breach of professional duty by an **insured person**.
- f) the recovery of money and interest due from another party, other than disputes where the other party indicates that a defence exists.

16.9 General legal expenses limitations and exclusions

This **section** excludes and does not cover:

- 16.9.1 Any claim reported to **us** more than one hundred and eighty (180) days after the date the **person insured** should have known about the insured incident.
- 16.9.2 **Legal expenses costs** incurred before the written acceptance of a claim by **us**.
- 16.9.3 Fines, penalties, compensation or damages which the **person insured** is ordered to pay by a court or other authority, other than compensation awards as covered under Compensation awards clause and the Legal defence clause above.

- 16.9.4 Legal action a **person insured** takes which **we** or the **appointed representative** have not agreed to, or where the **person insured** does anything that hinders **us** or the **appointed representative**.
- 16.9.5 Any claim relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.
- 16.9.6 Any claim relating to rights under a franchise or agency agreement entered into by **you**.
- 16.9.7 Any insured incident deliberately or intentionally caused by a **person insured**.
- 16.9.8 A dispute with **us** not otherwise dealt with under clause 16.
- 16.9.9 Any claim relating to a shareholding or partnership share in the **business** shown in the **schedule**.
- 16.9.10 Judicial review, coroner's inquest or fatal accident inquiry.
- 16.9.11 Any claim caused by, contributed to by or arising from:
- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from burning nuclear fuel;
 - b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear part of it;
 - c) war, invasion, foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, military force or coup, or any act of terrorism or alleged act of terrorism as defined by the Terrorism Act 2000 ;
 - d) pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds.
- 16.9.12 When either at the commencement of or during the course of a claim, **you** are declared bankrupt or have filed a bankruptcy petition or winding-up petition, or have made an arrangement with **your** creditors, or have entered into a deed of arrangement or are in liquidation or part or all of **your** affairs or property are in the care or control of a receiver or administrator.
- 16.9.13 Any claim directly or indirectly caused by or resulting from any device failing to recognise, interpret, or process any date as its true calendar date.
- 16.9.14 Any claim where legal action resulting from one or more event arising at the same time or from the same originating cause which could lead to the Court making a group Litigation Order.
- 16.9.15 Any claim relating to written or verbal remarks that damage the **person insured's** reputation.
- 16.9.16 Any claim where a **person insured** is not represented by a law firm, barrister or tax expert.

16.10 Legal expenses other terms and conditions

- 16.10.1 On receiving a claim, if representation is necessary, **we** will appoint a **preferred law firm, tax consultancy** or in-house lawyer as **your appointed representative** to deal with **your** claim. They will try to settle **your** claim by negotiation without having to go to court.
- a) If the appointed **preferred law firm, tax consultancy** or **our** in-house lawyer cannot negotiate settlement of **your** claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest, then **you** may choose a law firm or tax expert to act as the **appointed representative**. **We** will choose the

appointed representative to represent **you** in any proceedings where **we** are liable to pay a compensation award.

- b) If **you** choose a law firm as **your appointed representative** who is not a **preferred law firm** or **tax consultancy**, **we** will give **your** choice of law firm the opportunity to act on the same terms as a **preferred law firm** or **tax consultancy**. However if they refuse to act on this basis, the most **we** will pay is the amount **we** would have paid if they had agreed to the **DAS standard terms of appointment**.
 - c) The **appointed representative** must co-operate with **us** at all times and must keep **us** up to date with the progress of the claim.
- 16.10.2 A **person insured** must:
- a) co-operate fully with **us** and the **appointed representative**; and
 - b) give the **appointed representative** any instructions that **we** ask **you** to.
- 16.10.3 A **person insured** must tell **us** if anyone offers to settle a claim and must not negotiate or agree to any settlement without **our** written consent.
- a) If a **person insured** does not accept a reasonable offer to settle a claim, **we** may refuse to pay further **legal expenses costs**.
 - b) **We** may decide to pay a **person insured** the reasonable value of the claim that the **person insured** is claiming or is being claimed against them instead of starting or continuing legal action. In these circumstances a **person insured** must allow **us** to take over and pursue or settle a claim in their name. A **person insured** must allow **us** to pursue at **our** own expense and for their benefit, any claim for compensation against any other person and a **person insured** must give **us** all the information and help **we** need to do so.
 - c) Where a settlement is made on a without-costs basis **we** will decide what proportion of that settlement will be regarded as **legal expenses costs** and payable to **us**.
- 16.10.4 A **person insured** must:
- a) instruct the **appointed representative** to have **legal expenses costs** taxed, assessed or audited if **we** ask for this; and
 - b) must take every step to recover **legal expenses costs** and court attendance and jury service expenses that **we** have to pay and must pay **us** any amounts that are recovered.
- 16.10.5 If the **appointed representative** refuses to continue acting for a **person insured** with good reason or if a **person insured** dismisses the **appointed representative** without good reason, the cover **we** provide will end at once, unless **we** agree to appoint another **appointed representative**.
- 16.10.6 If a **person insured** settles a claim or withdraws their claim without **our** agreement, or does not give suitable instructions to the **appointed representative**, **we** can withdraw cover and will be entitled to reclaim any **legal expenses costs** **we** have paid.
- 16.10.7 **We** may require **you** to get, at **your** own expense, an opinion from an expert, that **we** consider appropriate, on the merits of the claim or proceedings, or on a legal principle. The expert must be approved in advance by **us** and the cost agreed in writing between **you** and **us**. Subject to this **we** will pay the cost of getting the opinion if the expert's opinion indicates that it is more likely than not that **you** will recover damages (or obtain any other legal remedy that **we** have agreed to) or make a successful defence.
- 16.10.8 If there is a disagreement between **you** and **us** about the handling of a claim and it is not resolved through **our** internal complaints procedure and **you** are a small business, **you** can contact the Financial Ombudsman Service for help. Details available from

www.financial-ombudsman.org.uk. Alternatively there is a separate arbitration process (this applies to all sizes of business). The arbitrator will be a barrister chosen jointly by **you** and **us**. If there is a disagreement over the choice of arbitrator, **we** will ask the Chartered Institute of Arbitrators to decide.

16.10.9 A **person insured** must:

- a) keep to the terms and conditions of this **section**
- b) take reasonable steps to avoid and prevent claims
- c) take reasonable steps to avoid incurring unnecessary costs
- d) send everything **we** ask for in writing, and
- e) report to **us** full and factual details of any claim as soon as possible and give **us** any information **we** need.

16.10.10 **We** will not pay the claim if a claim the **person insured** has made to obtain benefit under this **section** is fraudulent or intentionally exaggerated, or a false declaration or statement is made in support of a claim.

16.10.11 Apart from **us**, **you** are the only person who may enforce all or any part of this policy and the rights and interests arising from or connected with it. This means that the Contracts (Rights of Third Parties) Act 1999 does not apply to this **section** in relation to any third-party rights or interest.

16.10.12 If any claim covered under this **section** is also covered by another policy, or would have been covered if this **section** did not exist, **we** will only pay **our** share of the claim even if the other insurer refuses the claim.

16.10.13 This policy is governed by the law that applies in the part of the United Kingdom, Channel Islands or Isle of Man where **your business** is registered. Otherwise the law of England and Wales applies. All Acts of Parliament mentioned in this policy include equivalent laws in Scotland, Northern Ireland, the Isle of Man and the Channel Islands as appropriate.

17 General exceptions

17.1 Date recognition

This **policy** excludes and does not cover any claim directly or indirectly caused by or contributed to by or arising from the failure of any computer or other equipment, data, processing, service, product, microchip, micro processor, integrated circuit, embedded chip or similar device, computer, software, program or process or any other electronic system or any design or advice in connection with any of the foregoing irrespective of ownership possession or use and whether occurring before during or after the year 2000:

- 17.1.1 correctly to recognise any date as its true calendar date;
- 17.1.2 to capture save or retain and/or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date;
- 17.1.3 to capture save or retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date but this shall not exclude in respect of **section G** – Contents; **section H**- Buildings and **section I** - Business interruption subsequent **damage** not otherwise excluded which itself results from fire, lightning, explosion, theft, aircraft or other aerial devices or articles dropped therefrom riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, escape of water from any tank, apparatus or pipe or impact by any road vehicle or animal provided such contingency is insured by the **section**.
- 17.1.4 This exception is not applicable to **sections F** - Cyber liability or **K** – Employers' liability

17.2 Electrical plant

Sections G - J of this **policy** exclude and do not cover any **damage** to or destruction of any electrical plant or electrical appliance i.e. dynamo, transformer, motor or other working electrical machinery apparatus or fittings directly caused by its own over-running, short-circuiting, excessive pressure or self-heating but should fire extend to and **damage** or destroy any other part of the plant or appliances or other property insured hereby such **damage** or destruction is not excluded by the **policy**.

17.3 Heat processes

Sections G - J of this **policy** exclude and do not cover any **damage** to property insured due to its undergoing any process necessarily involving application of heat.

17.4 Northern Ireland

Sections G - J of this **policy** exclude and do not cover any **damage** in Northern Ireland occasioned by or happening through or in consequence directly or indirectly of:

- 17.4.1 riot, civil commotion and (except in respect of **damage** by fire or explosion) strikers locked-out workers or persons taking part in labour disturbances or malicious persons;

17.5 Nuclear risks

Except in respect of claims admissible under **section K** this **policy** excludes and does not cover any:

- 17.5.1 **damage** to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- 17.5.2 any legal liability of whatsoever nature;
- 17.5.3 any sum which **you** become legally liable to pay or any loss or expense;

directly or indirectly caused by or contributed to by or arising from or, in the case of 17.5.1 above, attributable to:

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

17.6 Pressure waves

Sections G - J of this **policy** exclude and do not cover any **damage** directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

17.7 Requisition or confiscation of property

Sections G - J of this **policy** exclude and do not cover any **damage** occasioned by or happening through confiscation or requisition or destruction by order of the Government or any Public Authority.

17.8 War and terrorism

Except in respect of claims arising under **sections J** and **K** this **policy** excludes and does not cover any **damage** cost or expense of whatsoever nature directly or indirectly caused by resulting from or in connection with:

- 17.8.1 any act of **war** or **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- 17.8.2 any action taken in controlling preventing suppressing or in any way relating to any act of **war** or **terrorism**.

If **we** allege that by reason of this exception any **damage** cost or expense is not covered by this **policy** the burden of proving the contrary shall be upon **you**.

17.9 War, political risk and terrorism limitation applicable only to section K – Employers' liability

- 17.9.1 **Section K** excludes and does not cover any liability which arises directly or indirectly out of or caused by **war** or **terrorism** except that this exclusion shall not apply to the first £5,000,000 of any liability for an act of **war** or **terrorism** provided that **our** maximum liability will not exceed £5,000,000 in respect of:

- a) any one claim against **you** or series of claims against **you**; and
- b) any claim or series of claims made by **you** under **section K**;

arising out of one occurrence.

18 Claim procedure

Except for **section K**, the due observance and fulfilment of the provisions of the Claim notification and Claim procedure clauses are a condition precedent to **our** liability for any claim under this **policy**. The 'Observance clause' sets out the consequences of a failure to comply with conditions precedent.

18.1 Claim notification – For sections A - F

18.1.1 **You** will give notice in writing or by an agreed electronic medium, to **us**:

- a) as soon as reasonably practical of any **claim**, but in any event not later than thirty (30) days from receipt of any **claim** or any notice of an intention to make a **claim** and for the avoidance of doubt within the **period of insurance**;
- b) as soon as reasonably practical of any **circumstance**, but in any event before expiry of the **period of insurance**;
- c) within two (2) working days, but in any event before expiry of the **period of insurance**, of receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract;

with full particulars thereof. Provided always that such written notice is given to the **insurer** during the same **period of insurance** or (if **you** renew this insurance with **us**) within seven (7) days after its expiry.

18.1.2 **We** agree that any **circumstance** notified to us during the **period of insurance** which subsequently gives rise to a **claim** after expiry of the **period of insurance** shall be deemed to be a **claim** first made during the **period of insurance**.

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

- a) by first advising your insurance broker; and/or
- b) by post to QBE Claims, Plantation Place, 30 Fenchurch Street, London, EC3M 3BD; and/or
- c) by email to smepiclaims@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.

18.2 Claim notification – For sections G - L

18.2.1 On the happening of any event which may give rise to a claim **you** must:

- a) notify **us** immediately;
- b) inform the police immediately if the **damage** has been caused by thieves malicious persons or vandals or by riot civil commotion strikes or labour disturbances

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

- d) by first advising your insurance broker; and/or
- e) by post to QBE Claims, Acclaim House, Central Park, New Lane, Leeds, LS11 5UF; and/or
- f) by telephone **us** on **0844 7369640**; or
- g) 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.

18.3 Claim notification - Section M

If **your** issue cannot be dealt with through legal advice and needs to be dealt with as a potential claim under this **policy**, phone **us** on 0117 9330618 and **we** will give **you** a reference number. At this point **we** will not be able to tell **you** whether the claim is covered or not but **we** will pass the information **you** have given **us** to **our** claims-handling teams and explain what to do next.

Please do not ask for help from a lawyer, accountant or anyone else before **we** have agreed that **you** should do so. If **you** do, **we** will not pay the costs involved even if **we** accept the claim.

18.4 Your duties – All sections except Section M

18.4.1 On the happening of any event which may give rise to a claim **you** must:

- a) give all information and assistance **we** may require and forward all documents, to enable **us** to investigate, settle or resist any claim as **we** may require;
- b) not make or allow to be made on **your** behalf any admission offer promise payment of indemnity without **our** written consent;
- c) take all practicable steps to recover property lost and otherwise minimise the claim;
- d) not incur any expense without the consent of **our** except at the **insured's** own cost; and
- e) always act honestly,
- f) within thirty (30) days or such further time as **we** may allow in writing deliver to **us** a written claim providing at **your** own expense all details proofs and information regarding the cause and amount of **damage** as **we** may reasonably require together with details of any other insurances on any property or liability covered by this **policy** and (if demanded) a statutory declaration of the truth of the claim and or any related matters;
- g) not destroy evidence, supporting information or documentation 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**.

18.4.2 In respect of any event which may give rise to legal or regulatory proceedings, **you** must:

- a) immediately forward to **us** every letter claim writ summons and process immediately upon receipt without acknowledgement;
- b) advise **us** in writing immediately **you** have knowledge of any pending prosecution inquest fatal **accident** or ministry inquiry;
- c) 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;
- d) authorise **us** to obtain medical records or other pertinent information upon request, in the event of an insured event involving **bodily injury**.

18.4.3 As regards **section I** **you** must within thirty (30) days after the expiry of the **indemnity period** or within such further time as **we** may in writing allow at **your** own expense deliver to **us** a statement setting out particulars of the claim together with details of all other insurance covering any part of the damage or resulting loss of **gross revenue**. You shall at **your** own expenses also provide **us** with such books of account and other **business** books vouchers invoices balance sheets and other documents proofs information explanation and other evidence as may reasonably be required by **us** for the purpose of investigating or verifying such claim together with (if demanded) a statutory declaration of the truth of the claims and any related matter. No claim under this **section I** shall be payable unless the terms of these conditions have been complied with and in the event of non compliance therewith in any respect any payment on account of the claim already made shall be repaid to **us** immediately.

18.4.4 On the happening of any event which may give rise to a claim **you** must prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited being **war** or an act of **terrorism** that the said exclusion or **limit of indemnity** does not apply, it

being understood and agreed that any portion of an exclusion or **limit of indemnity** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable.

18.5 Your duties – Section M

Please refer to **section M**

18.6 Advancement of defence costs

In respect of any **claim** covered by **section B**, **we** will advance **defence costs** prior to the final settlement of a **claim**. Such advance payments of **defence costs** shall be repayable to **us** by the **insured** severally according to their respective interests in the event and to the extent that it is determined that they were not entitled under **section B** of this **policy** to payment of such **defence costs**.

18.7 Disputed defence or appeal

If any dispute arises between **you** and **us** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Queen's Counsel 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 person falling within the definition of **insured** separate representation will be arranged for each party.

The cost of such legal opinion shall be regarded as part of the **defence costs**.

18.8 Allocation – section B

If an **we** incur a loss covered by this **section B** together with other loss which is not covered by this **section B** or a **claim** is made against both a party entitled to cover and a party not so entitled then the following sub-paragraphs will apply:

18.8.1 **we** shall pay only such amount as is just and equitable having regard to the relative legal and financial exposures of the loss covered by this **section B** compared to the other loss which is not covered by this **section B** and of the party entitled to cover compared to the party not so entitled;

18.8.2 **you** and the **insurer** shall use their best efforts to agree this amount;

18.8.3 in default of an agreement, this amount shall be determined by an **independent lawyer** in accordance with the principles set out in clause 18.7.1 above.

18.9 Basis of valuation

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

18.9.1 value of a non sterling currency at the rate of exchange published in the Financial Times on the date a **loss**;

18.9.2 actual market value of securities at the close of business on the day the **loss**, or for more than the actual cost of replacing the securities, whichever is the less, plus the cost to post any lost instrument bond;

18.9.3 cost of blank books, blank pages or other materials, plus the cost of labour and computer time for the actual transcription or copying of **data** furnished by **you** in order to reproduce books of accounts and records not held on a **computer system**;

18.9.4 cost of labour for the actual transcription or copying of **data** held in a **computer system** furnished by **you**, in order to reproduce such **data**;

18.9.5 actual cash value of **property** at the time of a **loss** or the actual cost of repairing or replacing the **property** with property or material of like quality or value, whichever is less. The actual cash value of **property** held by **you** as a pledge, or as collateral for an advance or a loan, shall be considered not to exceed the value of such **property** as determined and recorded by **you** when making the advance or loan, or in the absence of a record, the unpaid portion of the advance or loan plus accrued interest at legal rates.

18.10 Our rights

- 18.10.1 Claims will be handled and administered by the **insurer** or such parties as **we** in **our** absolute discretion may determine.
- 18.10.2 **We** shall be entitled on the happening of any **damage** to enter any building where such **damage** has happened and to take and keep possession of the property insured and to deal with salvage in a reasonable manner and this **policy** shall be proof of leave and licence for such purpose but the property may not be abandoned to **us**;
- 18.10.3 **We** shall be entitled at **our** option to either:
- a) repair or replace the property or any part of the property for which it may be liable under this **policy**; or
 - b) make payment in money to **you** in lieu of such repair or replacement or reinstatement effected as nearly as may be reasonably practicable shall be deemed a complete indemnity under this **policy**.
- 18.10.4 **We** shall only be liable to pay **defence costs** to which we has given our prior written consent.
- 18.10.5 **We** will be under no obligation to investigate any potential **claims** or to undertake the conduct of any proceedings in connection with such **claims** and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured**, upon such conditions as regards the payment of costs and with such liberty to bind the **insurer** by compromise as **we** may in its absolute discretion determine.
- 18.10.6 **We** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the **claim** can be settled and will relinquish the conduct and control of the **claim** and be under no further liability, except (where payable under the relevant **section**) for payment of **defence costs** incurred prior to the date of payment.
- 18.10.7 **We** may at any time apply to **you** for reimbursement for payments made under **section B** clause 2 but which do not exceed the **excess**.

18.11 Recoveries

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

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

18.12 Subrogation

- 18.12.1 For each and every claim the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit that may give rise to a claim under this insurance and must assist the **insurer** in all respects in exercising such rights if requested to do so by the **insurer**.
- 18.12.2 **We** agree not to exercise such rights against any principal, partner, director or employee of the **insured** unless the claim or loss is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that principal, partner, director or **employee**.

19 General conditions

19.1 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

19.2 Cancellation

19.2.1 Our rights

We shall not be bound to accept any renewal of this **policy** and may at any time give twenty one (21) days notice of cancellation by recorded delivery to **you** 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 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.

19.2.2 Your rights

You may cancel this **policy** in the first year of insurance during the fourteen (14) days after the contract has been concluded by giving notice in writing to **your** insurance adviser at the address shown in their correspondence or to QBE Insurance (Europe) Ltd. This right does not apply at the first or any subsequent renewal of the **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 likely to give rise to a claim but is yet to be reported to **us**;

during this fourteen (14) day period **we** will give a refund for the proportionate part of the premium paid in respect of the unexpired term of this **policy** subject to a minimum premium of £50.

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.

19.3 Confirmation of values at risk

You must provide to **us** at the inception of the **policy** and annually thereafter full details of the **declared value** as well as the wageroll and turnover of the **business**.

19.4 Contract (Rights of Third Parties) Act 1999

This insurance 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 insurance 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 2010.

19.5 Contribution

19.5.1 For **sections G – J** 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 its proportional share thereof.

19.5.2 For **sections A – F** and **K – M** if there is any other valid and collectible insurance that is available to a party able to claim under sections **A – F** and **K – M** other than insurance that is specifically stated to be in excess of and names you for the insurance by such a policy, then the insurance afforded by this **policy** will be in excess of and will not contribute to such other insurance.

19.6 Difference in conditions

For **section A** – Professional liability, in respect of Chartered Surveyors in England and Wales, Scotland or Ireland (as applicable) it is agreed that, in the event of any dispute between **you** and **us**, the terms, conditions, exclusions or limitations of the Approved Professional Indemnity Insurance Minimum Wording (as defined in the Professional Indemnity Insurance Regulations from time to time issued by the Royal Institution of Chartered Surveyors) in force at the inception date of this **period of insurance** or at the time of its renewal or anniversary date (whichever is later) shall take precedence over the terms, conditions, exclusions or limitations of this **policy** which are less favourable to **you**.

19.7 Dispute resolution

19.7.1 For **section A** – Professional liability, any dispute between **you** and **us**:

- a) as to the correct interpretation of the definition of **business services** under this **policy**; or
- b) regarding the application of the ‘Special institution condition’ clause.

shall be referred by either party for arbitration in accordance with the law and procedure of England and Wales to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

19.7.2 If **you** or **us** cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by reference to a Queen’s Counsel of the English Bar to be mutually agreed between **you** and **us**, whose decision shall be binding. In resolving the dispute, the Queen’s Counsel shall have due regard to the interests of both **you and us**. In the event of disagreement regarding the appointment of the Queen’s Counsel, the Queen’s Counsel shall be appointed by the chairman of the Bar Council. The costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

19.7.3 The parties agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

19.7.4 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 will be referred by either party to courts subject to the law and jurisdiction set down in the Applicable law clause above.

19.7.5 All sections other than **section A** – Professional liability. All matters in dispute between **you**, other insured parties and **us** arising out of or in connection with this insurance 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 and the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

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

19.7.7 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 will be referred by either party to courts, subject to the law and jurisdiction set down in the undernoted Law and jurisdiction clause.

19.8 Employers' Liability (Compulsory Insurance) Act 1969

The indemnity granted by **section K** is deemed to be in accordance with the provisions of the Employers' Liability (Compulsory Insurance) Act 1969 and the Employers Liability (Compulsory Insurance) Regulations 1998 or any subsequent amendment or re-enactment or similar legislation in Northern Ireland, the Isle of Man and the Channel Islands. Where any condition precedent, exclusion, term or condition of this **policy** is deemed prohibited by the act or regulations, then **we** will provide an indemnity to the **employee** under the terms of **section K** but **you** will repay to **us** that part of **our** indemnity for which it would not otherwise have been liable under this **policy** by reason of any such breach of condition precedent, term, condition or exclusion.

19.9 Fraud

19.9.1 If the claim or any part of a claim is in any respect fraudulent or if any fraudulent means or devices are used by **you** or anyone acting on **your** behalf to obtain any benefit under this **policy**; or

19.9.2 If any liability, loss, destruction or **damage** is occasioned by **your** wilful act or with the connivance;

then there will be no rights to any form of payment or indemnity under this **policy**.

Further, any claim paid to **you** where there has been any fraudulent means or device must be repaid to the **insurer**.

19.10 Law and jurisdiction

The law allows the parties to this contract of insurance to select the law and jurisdiction to be applied to this **policy**. Unless it is agreed otherwise, the law that applies to this contract is the law of that part of the **United Kingdom** where **your** head office is located.

It is agreed that any legal proceedings between the **insured** and the **insurer** in connection with this contract will only take place in the courts of that part of the **United Kingdom** where **you** are located and **you** are subject to the exclusive jurisdiction of that court.

19.11 Material alteration and disclosure

19.11.1 This **policy** shall be voidable in the event of misrepresentation and/or non-disclosure of any material particular.

19.11.2 **You** shall give **us** notice of any material change or change in circumstances affecting the nature of **your business** and/or **business services** and until **we** shall have agreed in writing to accept the altered risk **we** shall not provide an indemnity in respect of liability arising from such altered circumstances.

19.11.3 **You** shall give **us** written notice as soon as practicable of any material alteration to the risk during the **period of insurance** including but not limited to:

- a) going into voluntary bankruptcy, receivership or liquidation or **your** failure to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- b) any **take-over or merger**.
- c) any material omission from, change in, or addition to, the **statement of fact** or any other information given to **us** for underwriting purposes either before or during the **period of insurance**.

19.11.4 Upon receipt of such notice, **we** shall be entitled to continue the **policy** on such new terms and conditions as it may consider appropriate. Until we shall have agreed in writing to accept the altered risk we shall not provide an indemnity in respect of liability arising from such altered circumstances. Failure to give such notice shall entitle **us** to reject or reduce claims connected with the failure and/or continue the **policy** on such new terms and conditions as it may consider fit.

19.12 Minimisation of risk

19.12.1 **You** will take all reasonable steps at **your** own expense to prevent an insured event arising or continuing.

19.12.2 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**.

19.12.3 In respect of the coverage afforded under the 'Fraudulent use of information' clause, the **insured** will take all reasonable steps to protect **information and communication assets**, by:

- a) having virus protection software operating on **information and communication assets** which is running, correctly configured and regularly or automatically updated;
- b) having a fire wall or similar configured device to control access to **information and communication assets**;
- c) encrypting and controlling the access of all **information and communication assets** and external devices including plug-in devices networked to **information and communication assets**;
- d) controlling unauthorised access to **information and communication assets** by correctly configuring its wireless network;
- e) changing all passwords on **information and communication assets** at least every sixty (60) days and cancel any username, password or other security protection after it knew or had reasonable grounds to suspect that it had been available to any unauthorised person;
- f) taking regular back-up copies of any data, file or programme on **information and communication assets**;
- g) having an operational system for logging and monitoring user activity on **information and communication assets**.

19.13 Minimum standards of security

19.13.1 It is a condition precedent to **our** liability for **damage** by theft or any attempt thereat that the following minimum level of security (or alternative security precautions as agreed in writing by **us** whether following a survey or otherwise) is installed at the **premises** and put into effect whenever the **premises** are left unattended:

- a) the final exit door of the **premises** are to be fitted with a mortise deadlock which has 5 or more levers and/or conforms to BS3621. A matching boxed striking plate must also be added.
- b) all other external doors and all internal doors giving access to any part of the building not occupied by **you** for the purpose of the **business** are to be fitted with either:
 - i) a mortise deadlock which has 5 or more levers or conforms to BS3621 with a matched boxed striking plate as specified above; or

- ii) two key operated security bolts for doors one fitted approximately 30cm from the top of the door and the other 30cm from the bottom.
- c) aluminium or UPVC framed doors are to be fitted with integral cylinder key operated mortise deadlocks.
- d) all opening external basement ground floor and other accessible (accessible being a window that can easily be reached such as a window adjacent to a flat roof or fire escape balconies canopies or down pipes) windows, fanlights, roof lights and skylights are to be fitted with key operated window locks. This requirement does not apply to windows protected by solid steel bars weldmesh or expanded metal grilles securely fixed to the brickwork surrounding the window.
- e) any door or window officially designated a fire exit by a fire authority is excluded from the above requirements. These are to be secured internally by panic bolts or fire exit bolts (capable of opening at all times) any additional devices must be approved by the local Fire Prevention Officer.

19.14 Multiple claims

- 19.14.1 All causally connected or interrelated **wrongful acts**, or conduct (as described in clause 20.12.5), jointly constitute a single **wrongful act**, or conduct, under this **policy**, which shall be deemed to have occurred upon the date of the earliest **wrongful act**, or conduct.
- 19.14.2 Where a single **wrongful act**, or conduct, or series of causally connected or interrelated **wrongful acts** or conduct (as in clause 20.12.5), gives rise to more than one **claim**, all such **claims** shall jointly constitute one **claim**, which shall be deemed to have been made at the time the first **claim** was made.
- 19.14.3 Where a single **wrongful act** gives rise to more than one **claim**, all such **claims** shall jointly constitute one **claim** under this **policy** and only one **excess** shall be applicable in respect of such **claim**.

19.15 Observance

It is a condition precedent to **our** liability under this **policy** that the terms hereof so far as they relate to anything to be done or complied with by **you** are duly and faithfully observed and fulfilled by **you** and by any other person who may be entitled to be indemnified under this **policy**.

19.16 Privacy and the Data Protection Act 1998

Any personal information provided when applying for this **policy** or in connection with its administration, including the notification and handling of any claim, will be recorded and processed by us in accordance with the Data Protection Act 1998.

If the personal information includes sensitive personal data (such as health details or details of criminal convictions) **you** consent to the information being used for the purposes set out below and being disclosed to the parties listed below.

It is a condition of this insurance that where personal information is provided about another person, **you** will have informed such a person of **our** identity, the purposes for which their personal data will be processed and the disclosures which may be made (each as set out below) and have obtained their consent to the processing of their personal information (including sensitive personal data) in this way.

Personal information is used for the following purposes:

- a) to administer the **policy**, including underwriting, claims handling and issuing renewal information and documentation;
- b) to carry out research and analysis and create statistical and testing information and for the purposes of customer profiling (including with transactional information);
- c) to help prevent and detect fraud or loss and recover debt;

d) where required or permitted by law.

Personal information may be disclosed to the following third parties:

- e) other members of the QBE Insurance Group for the purposes set out above. A list of companies in the QBE Insurance Group is available on request;
- f) other insurers and reinsurers of the risk written under this **policy** and the your broker;
- g) agents and service providers appointed by **us** to carry out activities in connection with the **policy** including claims handling and investigative agents and general service providers including providers of IT systems and maintainers;
- h) credit reference and fraud databases and law enforcement bodies;
- i) potential purchasers of the whole or part of the **our** business.

We may share information with other firms and public bodies, including the police and statutory and/or authorised bodies, in order to substantiate information, law enforcement, electronic licensing and to prevent or detect fraud, by accessing and updating various databases. 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 databases. Details of databases accessed or contributed to are available on request.

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 data as the UK. **We** will ensure that such transfers comply with data protection law and that the personal information is kept securely and protected from unauthorised access.

We maintain physical, electronic and procedural safeguards to protect your personal information and follows strict security procedures in the storage and disclosure of personal information to safeguard the data and prevent unauthorised access to or loss of such information.

We may monitor and record communications with you (including phone conversations and emails) for compliance and quality control purposes.

Should **you** wish to receive a copy of the information held or if there are any queries in relation to the way such information is used or any inaccuracies in the data **you** should write to the Data Protection Officer at QBE Insurance (Europe) Limited, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

19.17 Records

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.

19.18 Recovery of benefits

In the event that **your** liability in damages is reduced because benefits and/or charges included in the damages are to be paid under statute to the Compensation Recovery Unit or its successor, **your** liability in damages for the purposes of this insurance will be deemed to include such benefits and charges.

19.19 Representation

Any person falling within the definition of the **insured** agrees that the first named insured is their agent for the purpose of 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 **you**.

19.20 Severability

- 19.20.1 The proposal shall be construed as a separate application for insurance under this **policy** by each **insured**. No statements in the **statement of fact** or knowledge possessed by an **insured** shall be imputed to any other **insured**.
- 19.20.2 For the purpose of determining the applicability of the exclusions or limitations, the act or knowledge of an **insured** shall not be imputed to any other **insured**.

19.21 Sanctions and embargo

Notwithstanding anything to the contrary in the **policy** the following condition shall apply:

- 19.21.1 If, by virtue of any law or regulation which is applicable at the inception of this **policy** or which becomes applicable at any time thereafter, providing coverage to the **insured** and/or paying a claim and/or providing a benefit under the **policy** directly or indirectly breaches an embargo or sanction, the **insurer** shall not indemnify nor make any payment or provide any economic benefit to the **insured** or to any other party under this **policy** to the extent that it would be in breach of such law or regulation.
- 19.21.2 In circumstances where the payment or provision of a valid and otherwise collectable claim or benefit may directly or indirectly breach an embargo or sanction, then the **insurer** will take all reasonable measures to obtain the necessary authorisation to make such payment or provision.

19.22 Special institution condition

- 19.22.1 For **section A** – Professional liability. Where there has been non-disclosure or misrepresentation of facts or untrue statements in the **statement of fact** or in any other information or statements provided to or made to **us** and there has been no intention to deceive or mislead **us**, **we** will not exercise their right to avoid this **policy** nor will **we** be discharged from any liability under this **policy** provided that:
- a) where such non-disclosure or misrepresentation has prejudiced **us** consideration of terms under this **policy**, **we** shall be entitled to charge a reasonable additional premium in light of such prejudice.
 - b) However, in the case of a **claim** first made against **you** during the **period of insurance** where:
 - i) **you** had previous knowledge of the **circumstance** relating to such **claim**; and
 - ii) **you** should have notified the same under any preceding policy,
- 19.22.2 then, where the indemnity or cover under this **policy** is greater or wider in scope than that to which **you** would have been entitled under such preceding policy (whether with other insurers or not), **we** shall only be liable to afford indemnity to such amount and extent as would have been afforded to **you** by such preceding **policy**.
- 19.22.3 Notwithstanding the 'Awards by ombudsman' extension. Where **you** breach of or non-compliance with any provisions provided by 'Claims notification' clause of this **policy** has resulted in prejudice to the handling or settlement of any **claim**, **we** shall be entitled to reduce the indemnity afforded by this **policy** in respect of such **claim** (including **defence costs**) to such sum as in **our** reasonable opinion would have been payable by them in the absence of such prejudice.

19.23 Subscribing insurers

The subscribing **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reasons does not satisfy all or part of its obligations.

19.24 Tracing office database

Where **we** provide an indemnity under the Employers' Liability (Compulsory Insurance) Regulations 1998, **we** are required by regulation to maintain a database of all the companies and subsidiary companies covered by such insurance. **We** support and will add details of all company names to the Employers' Liability Tracing Office database.

Accordingly, it is a condition of this insurance that **you** undertake to supply full details (as required by the Employers' Liability Tracing Office) of the company and all subsidiary companies to **us** at inception of this **policy** and promptly thereafter following acquisition or disposal of any subsidiary company.

20 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute or regulation will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

For **section I** the words and expressions used in **your** books and accounts will have the meaning attached to them herein. Any adjustments implemented in current cost accounting will be disregarded. Further to the extent that **you** are accountable to the tax authorities for value added tax all terms in **section I** will be exclusive of such tax.

20.1 Accident

Accident means a single and unexpected event, which occurs at an identifiable time and place.

20.2 Administrator

Administrator means **your employee** or **your** director or the **trustee** who carries out administrative duties for or on behalf of the **trust scheme**.

20.3 Appointed representative

For **section M** – Legal expenses, appointed representative means the **preferred law firm**, law firm, **tax consultancy**, accountant or other suitably qualified person **we** will appoint to act on the **person insured's** behalf.

20.4 Asbestos surveys

Asbestos surveys either a management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006, or any comparable survey or inspection, whether of commercial or residential land or property.

20.5 Aspect enquiry

For **section M** - Legal expenses, aspect enquiry means an examination by HM Revenue & Customs which considers one or more specific aspects of **your** self assessment and/or corporation tax return.

20.6 Asset and liberty proceeding

Any proceeding brought against any **insured person** by any **official body** seeking:

- 20.6.1 confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **insured person**;
- 20.6.2 a charge over real property or personal assets of such **insured person**;
- 20.6.3 a temporary or permanent prohibition on such **insured person** from holding the office of or performing the function of a director or officer;
- 20.6.4 a restriction of such **insured person's** liberty to a specified domestic residence or an official detention;
- 20.6.5 deportation of an **insured person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **insured person's** conviction of a crime.

20.7 Bodily injury

20.7.1 For all **sections** except **section M** - Legal expenses, bodily injury means death and injury, illness or disease whether bodily or mental.

20.7.2 For **section M** - Legal expenses, bodily injury means death or injury caused by a specific or sudden accident.

20.8 Book debts

Book debts means the total amount of the balances debited to **customers** in **your** accounts after equitable allowances have been made for bad debts and for amounts debited (or invoiced but not debited) and credited (including credit notes and cash not passed through the books at the time of the **damage**) to **customers'** accounts in the period between the commencement of the **period of insurance** and the date of the **damage**.

20.9 Business

Business means the business stated in the schedule including:

20.9.1 the provision and management of canteen sports social or welfare organisations for the benefit of **employees** and fire security first aid medical and ambulance services;

20.9.2 private work undertaken with **your** prior consent by **employees** for any director or senior official of the **insured**;

20.9.3 the ownership maintenance and repair of such **premises**.

20.10 Business services

Business services means those professional services provided for a client under a contract of service and/or the provision of **multimedia activities** in the conduct of **your business**. It is agreed that **we** will not deny indemnity hereunder if **you** should change **your** name and there is no other change that materially alters the risk.

20.11 Business hours

Business hours means the period during which the **premises** are open for **business** or are otherwise occupied for **business** purposes by **you** or an authorised **employee**.

20.12 Circumstance

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

20.13 Claim

For **section A or F**, claim means:

20.13.1 the receipt by **you** of any written or verbal notice of demand for compensation made by a third party against **you**; or

20.13.2 any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process whether civil or criminal, cross-claim, counterclaim or third or similar party notice served upon **you**; or

20.13.3 any notice of intention, whether orally or in writing, to commence legal proceedings against **you**;

20.13.4 all loss, liability, expenses, and costs resulting from:

a) one and the same act error or omission; or

b) a series of acts errors or omissions arising out of or attributable to the same originating cause, source or event; or

c) the acts errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated;

shall jointly constitute one claim under this **policy**, and only one **excess** shall be applicable in respect of such claim.

For **section B, D and E**, claim means:

- 20.13.5 any written communication received by an **insured person, company or outside company, trustee** or an **administrator** alleging that the party has committed a **wrongful act** indicating an intention to claim against an **insured person, company or outside company, trustee or administrator** or to complain about him in respect of such **wrongful act** to a legal, administrative or regulatory authority; or
- 20.13.6 any written notice served on an **insured person, a trustee or an administrator** requiring the **insured person, trustee or administrator** to attend an interview or provide documentation or otherwise co-operate in an administrative or regulatory investigation, where the investigation directly concerns the conduct of the **insured person** (acting in his capacity as an **insured person**), **trustee or administrator** or of the affairs of the **company or outside company**;
- 20.13.7 any **pre-investigation**; or
- 20.13.8 any **extradition proceedings**.
- but for **section D** claim also includes:
- 20.13.9 any **asset and liberty proceeding**.

20.14 Client

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

20.15 Collateral warranty or duty of care agreement

Collateral warranty or duty of care agreement means any written agreement signed by the contracting parties that creates a duty of care by **you** to any party other than **your** direct client.

20.16 Company

Company means the company stated in the **schedule** and shall include all **subsidiary companies**.

20.17 Computer fraud

Computer fraud means the fraudulent manipulation of computer hardware or software or **computer system** by a third party (not being an employee).

20.18 Computer system

Computer system means any computer, data processing equipment, media or part thereof, system of data storage and retrieval, communications system, network, protocol or part thereof, storage device, microchip integrated circuit, real-time clock system or similar device, any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode or any electronic documents utilised in the ownership, security and management of the **insured's** electronic communication system, world-wide web site, internet site, intranet site, extranet site, or web address.

20.19 Computer violation

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

20.20 Computer Virus

Computer virus means any computer program, including but not limited to, any file virus, boot sector virus, macro virus, hostile applet, Trojan horse program, java virus, ActiveX virus or other executable program which contains instructions to initiate an event on the

infected computer, causing modification of or damage to data, memory or data media or otherwise adversely affecting the operation of any information and communications technology system.

20.21 Consultants

Shall mean any person undertaking business on **your** behalf and shall include any person, whether or not expressly described as a consultant, whose name and designation appear on any business stationery of **yours**, or in business communications or material of any nature issued on **your** behalf, or who is employed by **you** in offering surveying services to the public.

20.22 Corporate body trustee

Corporate body trustee means a **subsidiary company** that acts as a **trustee** for the **trust scheme**.

20.23 Corporate card fraud

Corporate card fraud means the fraudulent use by any third party (not being an employee) of any corporate credit, debit or charge card issued to **you** or any **employee** for business purposes, provided that **you** have complied fully with the provisions, conditions or other terms under which the card was issued.

20.24 Counterfeit

Counterfeit means an imitation of the original which is intended for fraudulent purposes to cause a reasonable person familiar with the appearance of the original to believe that the imitation is the original.

20.25 Crisis event

20.25.1 Crisis event means any of the following unforeseen events occurring during the **period of insurance** where, in the reasonable opinion of **your** chief executive officer, the event has the potential to make a significant impact on **your** consolidated annual revenues or **you** reputation if left unmanaged:

- a) the sudden, unexpected death or disability of any director or officer;
- b) the criminal conviction of any director or officer;
- c) loss of a major customer, contract or credit facility;
- d) employee workplace violence;
- e) the first apparent unauthorized intrusion into **your** computer facilities;
- f) a recall or boycott of any product;
- g) a man-made disaster;
- h) any criminal or fraud **investigation**; or
- i) any **claim**.

Crisis event does not include an event that affects **your** industry in general; rather than **your** specific **business**.

20.26 Cross tax enquiry

For **section M** - Legal expenses, cross tax enquiry means a **full enquiry** which includes a review of Value Added Tax and/or Employer Compliance.

20.27 Damage

Damage means:

20.27.1 loss of destruction of or damage to tangible property; and

20.27.2 in respect of **sections L** loss of use of tangible property that has been lost destroyed or damaged.

20.28 DAS

DAS means DAS Legal Expenses Insurance Company Limited.

20.29 DAS standard terms of appointment

For **section M** – Legal expenses, DAS standard terms of appointment means the terms and conditions (including the amount **DAS** will pay to an **appointed representative**) that apply to the relevant type of claim, which could include a conditional fee agreement (no-win, no-fee).

20.30 Data

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

20.31 Date of occurrence

For **section M** – Legal expenses, date of occurrence means:

- 20.31.1 for civil cases (other than under insured incident – 16.6 Tax protection), the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating event, the **date of occurrence** is the date of the first of these events. (This is the date the event happened, which may be before the date **you** or a **person insured** first became aware of it) ;
- 20.31.2 for criminal cases, the date the **person insured** began, or is alleged to have begun, to break the law;
- 20.31.3 for insured incident - 16.4 Statutory licence appeal, the date when **you** first became aware of the proposal by the relevant licensing or regulatory authority to suspend, alter the terms of, refuse to renew or cancel **your** licence or British Standard Certificate of Registration.
- 20.31.4 for insured incident - 16.6 Tax protection, the date when HM Revenue & Customs, or the relevant authority, first notifies **you** of its intention to carry out an enquiry. For **VAT** or **employer compliance disputes**, the date the dispute arises during the **period of insurance**.
- 20.31.5 for insured incident – 16.3.3 Legal defence - statutory notice appeals, the date when the **person insured** is issued with the relevant notice and has the right to appeal.

20.32 Defence cost(s)

Defence cost(s) means for all **sections** except **section M**:

- 20.32.1 all legal costs, charges, fees, expenses including witness costs and advances in respect of the same (other than **your** or the **insured person's** salaries, commissions, expenses or other benefits);
- 20.32.2 reasonable fees, costs and expenses of accredited experts retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **claim**; or
- 20.32.3 and any premiums paid for insurance instruments or for bonds which are required in order to defend proceedings, institute an appeal or be released on bail but without any obligation to furnish or procure such insurance instruments or bonds;
- 20.32.4 **pre-investigation costs**;
- 20.32.5 **investigation costs**;
- incurred with **our** prior written and **our** continuing consent in the investigation, defence or settlement of any **claim** and/or **circumstance(s)**.
- 20.32.6 Defence cost(s) means for **section M** – Legal expenses:
 - a) Legal costs

Legal costs being all reasonable and necessary costs chargeable by the **representative** on a standard basis. Also, the costs incurred by opponents in civil cases if a **person insured** has been ordered to pay them, or pays them with our agreement.

b) Accountant's costs

Accountant's costs being a reasonable amount in respect of all costs reasonably incurred by the **representative**.

c) Attendance expenses

Attendance expenses being the **person insured's** salary or wages for the time that the **person insured** is off work to attend any arbitration, court or tribunal hearing at the request of the **representative** or while attending jury service. **We** will pay for each half or whole day that the court, tribunal or the **person insured's**

The amount we will pay is based on the following:

- i) the time the **person insured** is off work including the time it takes to travel to and from the hearing. This will be calculated to the nearest half day assuming that a whole day is eight hours;
- ii) if the **person insured** works full time, the salary or wages for each whole day equals 1/250th of the **person insured's** yearly salary or wages;
- iii) if the **person insured** works part-time, the salary or wages will be a proportion of the **person insured's** weekly salary or wages.

20.33 Denial of service attack

Denial of service attack means 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.

20.34 Director or officer

Director or officer means any director or officer, management committee member or member of the board of managers of a **company**.

20.35 Discover, discovered or discovery

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

20.36 Documents

Documents means 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 computer records and electronic data material, but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

20.37 Employee

20.37.1 For **sections A, B, D** and **F** employee means any person including trainees and apprentices acting under a contract of service with **you** in respect of the conduct of **business services**.

20.37.2 For **section C** employee shall means:

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

- a) **your** directors, members of the board of directors, board of trustees or equivalent management board while performing acts within the usual scope of an employee;
- b) any former employee for the first sixty (60) days following termination of service;
- c) any person performing the duties of an employee on a temporary or part time basis;
- d) any student, secondee or volunteer gaining work experience or performing the duties of an employee under **your** supervision;
- e) any trustee, fiduciary, administrator, employee or officer of any **employee plan**; and
- f) any person or employee of any entity to whom **you outsource** any administrative service during the ordinary course of business;
- g) any employee falling under the definition of employee in this sub-clause who **you** are unable to name, but who have caused a **loss** under this **policy**, provided that the evidence proves beyond reasonable doubt that the **loss** was caused by such employee;
- h) any solicitor, other than a sole practitioner, retained by **you**, or any employee of the solicitor, whilst providing services for **you**;

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

20.37.3 For **section E** employee shall means:

any natural person employed under a contract of service or apprenticeship with **you** or the **trust scheme** during or prior to the commencement of the **period of insurance**.

20.37.4 For **sections K and L** employee shall means:

- a) any person under a contract of service or apprenticeship with **you**;
- b) any person who is hired to or borrowed by **you**;
- c) any person engaged in connection with a work experience or training scheme;
- d) any labour master or person supplied by him;
- e) any person engaged by labour only sub-contractors;
- f) any self-employed person working on a labour only basis under **your** control or supervision;
- g) any voluntary helper;

while working for **you** in connection with the **business**.

20.38 Employee plan

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

20.39 Employer compliance dispute

For **section M** – Legal expenses, employer compliance dispute means a dispute with HM Revenue & Customs concerning **your** compliance with Pay As You Earn, Social Security, Construction Industry or IR35 legislation and regulations.

20.40 Employment practice

Employment practice means:

- 20.40.1 discrimination with respect to the terms or conditions of employment on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law; or
- 20.40.2 sexual harassment, including unwelcome sexual advances, requests for sexual favours, and any unwelcome verbal, visual or physical contact of a sexual nature which:
 - a) is explicitly or implicitly made a term or condition of employment; and
 - b) creates a hostile or offensive working environment; and
 - c) when rejected or opposed by a person becomes a basis for decisions regarding that person's employment; or
- 20.40.3 defamation relating to a person's job skill, job performance, qualifications for employment, professional reputation, disciplinary history, or termination of employment; or
- 20.40.4 unfair or wrongful termination of employment or refusal to hire; or
- 20.40.5 adverse change in the terms and conditions of a person's employment in retaliation for that person's exercise of his or her rights under law, or support of the rights of another.

20.41 Environmental audit

Environmental audit means an investigation which is specifically intended to assess whether there is actual **pollution** present.

20.42 Excess

- 20.42.1 For **section A** - Professional liability. Excess means the first amount specified in the **schedule** payable by **you** in respect of each and every **claim** or **circumstance**, as ascertained after the application of all other terms and conditions of this insurance. The **limit of indemnity** is additional to the excess.
- 20.42.2 The excess will not be applied to payments made under 'Additional Surveyors' liability costs and expenses' clause apart from payments under 'Legal representation costs' clause.
- 20.42.3 As regards payments made under 'Awards by ombudsmen' extension, the excess will apply to:
 - a) any single award made by any ombudsman; or
 - b) any series of awards by any ombudsman attributable to the same originating cause.
- 20.42.4 For all sections other than **section A** - Professional liability. The **limit of indemnity** is additional to the excess and excess means the first amount specified in the **schedule** payable by **you** in respect of each and every **claim**, or **circumstance** as ascertained after the application of all other terms and conditions of this insurance. The **excess** will be applied to **defence costs**, fees and expenses (unless expressly stated otherwise in the **schedule**).

20.43 Extended reporting period

- 20.43.1 For **section B** extended reporting period means a period immediately following expiry of the **period of insurance** in which notice may be given to **us** of a **claim** first made during such period in respect of **wrongful acts** or conduct (as described in clause 20.12.5) which occurred prior to the expiry of the **period of insurance**.
- 20.43.2 For **section C** extended reporting period means the period noted in the **schedule** following the expiry of the **period of insurance** during which **you** may continue to notify claims and discovery of **loss** but only in relation to **loss** occurring prior to the expiry of the **period of insurance** and only if the **policy** for is not replaced by a similar **policy** issued by the insurer or by another company. Any claim made or **loss** discovered during the extended reporting period shall be deemed to have been made or discovered during the immediately preceding **period of insurance**.
- 20.43.3 For **section D** extended reporting period means where **you** or any of **your** directors, partners, officers, trustees or equivalent becomes aware of any act(s), error or omission which occurred prior to the expiry of the **period of insurance** which could reasonably be

anticipated to give rise to a **loss**, even though the exact amount or details of such **loss** are not known at that time. Such discovery shall constitute knowledge possessed or discovery made by every party insured by this **policy**. In the case of a number of acts, **loss** shall be deemed to have been discovered on the date of the first discovery of any such acts.

20.44 Forgery

Forgery means the signing by hand of another natural person's name or the alteration or counterfeit reproduction of the original of any cheque, draft, promissory note or similar written promise order other than that required in connection with any credit, debit or charge card with the intent to deceive in consequence of which money, funds or goods have been transferred. It shall not mean the signing of one's own name with or without authority in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated as hand written signatures.

20.45 Full enquiry

For **section M** – Legal expenses, full enquiry means an extensive examination by HM Revenue & Customs which considers all aspects of **your** tax affairs and includes a request to examine all **your** books and records. Excludes an examination which is limited to one or more specific aspects of **your** self assessment and/or corporation tax return.

20.46 Funds

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

20.47 Funds transfer fraud

Funds transfer fraud means fraudulent alteration of written, electronic, telegraphic, cable, teletype or telephone instructions to the financial institution by a third party (not being an employee).

20.48 Glass

Glass shall mean:

- 20.48.1 fixed glass in windows doors and fanlights;
- 20.48.2 glass showcases shelves tops and mirrors;
- 20.48.3 sanitary fixtures and fittings.

20.49 Gross revenue

Gross revenue means the money paid or payable to **you** for work done and for services rendered in course of the **business** at the **premises**.

20.50 Hacker

Hacker means anyone who specifically and maliciously targets **you** and gains unauthorised access to **your information and communication assets** solely by circumventing electronically the security system in place to protect against such unauthorised access to the **information and communication assets**.

Hacker does not include any principal, director or partner of **yours**.

20.51 Hacking

Hacking means unauthorised access to any computer or other equipment or component or system or item which processes, stores, transmits or retrieves data.

20.52 Increased cost of working

Increased cost of working means the additional costs incurred after **damage** to limit any reduction in turnover or revenue, and to maintain normal business operations.

20.53 Indemnity period

Indemnity period means the period beginning with the happening of the **damage** and ending not later than the number of months shown in the schedule during which the results of the **business** are affected as a result of the **damage**.

20.54 Independent lawyer

Independent lawyer means:

20.54.1 where the claim is in England, a Queen's Counsel agreed upon by both **you** and **us** or failing such agreement to be nominated by the chairman for the time being of the Bar Council of England and Wales; or

20.54.2 where the claim is in another jurisdiction, a lawyer of more than ten (10) years experience agreed upon by both **you** and **us** or failing such agreement to be nominated by the chairman of the local law society.

20.55 Injury

Injury means a specific injury which is sustained by the **insured person** during the **period of insurance**, is caused by an **accident**, and within twelve (12) months of the **accident**, solely and independently of any other cause, brings about death or disablement of the **insured person**.

20.56 Information and communication assets

Information and communication assets means **your** computer and telecommunication system, including but not limited to **your** email system, encrypted electronic signature, encrypted electronic certificate, website, intranet, network, software, hardware, firmware, program or any data held electronically.

20.57 Insured/you/your

Insured/you/your means

20.57.1 the person(s) or **company** named in the **schedule**; or

20.57.2 an **insured person**; or

20.57.3 your practice including their predecessors and any other practices but excluding all those practices, predecessors or other practices that are not disclosed to **us** in the **statement of fact**; or

20.57.4 the partners, directors or **members** of the practice during the **period of insurance**; or

20.57.5 former partners, former directors or former **members** of the practice; or

20.57.6 (in respect of the **business services** undertaken on behalf of the practice only) those persons named as consultants or former consultants in the **statement of fact**; or

20.57.7 any retired partner, director or **member** of the practice remaining as a consultant to the practice; or

20.57.8 (in respect of the **business services** undertaken on behalf of the practice only) any **employee** and/or former **employee** of the practice and any self-employed person;

20.57.9 the estate, heirs and executors or legal and personal representatives of those parties mentioned above in the event of their death, incapacity, insolvency or bankruptcy, for legal liabilities incurred due to any **wrongful act**, error or omission of such deceased, incompetent or bankrupt person.

20.57.10 a **trustee**, **administrator** or **trust scheme**;

20.57.11 the lawful spouse of any natural person insured provided that the claim against such spouse is to enforce a judgment against such natural person insured for a **claim** otherwise covered by this **policy**.

20.58 Insurer/we/our/us

Insurer/we/our/us means:

20.58.1 for **sections A - K**; QBE Insurance (Europe) Limited whose Head office and registered address is:

Plantation Place, 30 Fenchurch Street, London, EC3M 3BD, tel: 020 7105 4000
fax: 020 7105 4019. Registered in England No. 1761561. Home State - United
Kingdom. Authorised by the Prudential Regulation Authority and regulated by the
Financial Conduct Authority and the Prudential Regulation Authority. Registration
Number 202842.

20.58.2 for **section M**; DAS Legal Expenses Insurance Company Limited, whose Head office and
registered address is:

DAS House, Quay Side, Temple Back, Bristol BS1 6NH.
Home State - United Kingdom. Authorised by the Prudential Regulation Authority
and regulated by the Financial Conduct Authority and the Prudential Regulation
Authority. Registration Number 202106.

20.59 Insured entity

Insured entity means any **company** or **plan**.

20.60 Insured person

20.60.1 For **section B** insured person means:

- a) any natural person who is, was or during the **period of insurance** becomes a **director or officer** including any **non-executive director**;
- b) the **director's or officer's** estate, heirs, legal representatives or assigns, in the event of his death or incompetence or bankruptcy, but only for a **wrongful act** or conduct performed by that **director or officer** in their capacity as such;
- c) the lawful spouse or domestic partner of any **director or officer** provided that the **claim** is to enforce a judgment against that **director or officer** for a **wrongful act** or conduct performed in their capacity as such;
- d) any employee of the **company** not appointed by a receiver, administrative receiver, liquidator or administrator to the **company**
 - i) whilst acting in a managerial or supervisory capacity;
 - ii) named as a co-defendant with a **director or officer** of a **company** in a **claim** in which the employee is alleged to have participated or assisted in the commission of a **wrongful act**;
- e) any natural person acting as a shadow director of the **company** as defined in Section 741 of the Companies Act 1985 or the equivalent in another jurisdiction.

20.60.2 For **section C** insured person means:

- a) **you** or any of **your** principals, directors, partner or **employees**; or
- b) any person acting on **your** behalf other than an employee of a security company or organisation not being over seventy (70) years of age nor being under sixteen (16) years of age;

20.60.3 For **section D** insured person means a **manager** or a **pension trustee**.

20.60.4 For **section G** insured person means the individual or group (category of person) to whom **injury** must occur before **we** are liable to make any payment of benefit;

20.61 Interest

Interest means simple interest on the principal amount of any **loss** calculated at the London InterBank Offered Rate as published in The Financial Times on the date of **discovery** of the **loss**. Interest is deemed to be direct financial loss.

20.62 Investigation

Investigation means any hearing, examination or inquiry by an **official body** into **your** affairs or **outside entity**, or an **insured person** of such entity, once an **insured person** receives written documentation during the **period of insurance**:

- a) requiring them to attend before or produce **documents** to the **official body**; or

- b) identifying them as a target in writing by an investigating **official body** as a target of the hearing, examination or inquiry.

An **investigation** shall be deemed to be first made when the **insured person** is first so required or so identified.

20.63 Legal expenses costs

For **section M** – Legal expenses, legal expenses costs means;

- a) all reasonable and necessary costs chargeable by the **appointed representative** and agreed by **us** in accordance with the **DAS standard terms of appointment**; and
- b) the costs incurred by opponents in civil cases if the **person insured** has been ordered to pay them, or the **person insured** pays them with **our** agreement.

20.64 Limit of indemnity

For sections A, B, D E and F

20.64.1 Limit of indemnity means the amount specified in the **schedule**, which shall be the maximum amount payable by the **insurer** in respect of any one **claim**:

- a) regardless of the number of insured parties, persons or organisations bringing **claims** against the **insured**; and
- b) regardless of the number of **claims** or **wrongful acts** made by the **insured**.

For sections C

20.64.2 Limit of indemnity means the amount specified in the **schedule**, which shall be the maximum amount payable by the **insurer** in respect of any one **loss** regardless of the number of insured parties, persons or organisations bringing claims against the **insured**.

For sections K and L

20.64.3 Limit of indemnity means the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:

- a) **other insured parties**;
- b) persons or organisations bringing claims or suits; or
- c) claims against the **insured** or series of claims against the **insured** or claims or series of claims made by the **insured**.

For section M

20.64.4 Limit of indemnity means the amount specified in the **schedule**, which shall be the maximum amount payable by the **insurer** for all claims resulting from one or more event arising at the same time or from the same originating cause.

20.64.5 **Defence costs** will form part of or be paid in addition to the limit of indemnity as stated in each **section**.

20.64.6 Where a limit of indemnity is stated as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.

20.64.7 Where a **claim** or series of claims can be brought under more than one (1) **section** of this **policy**, **you** are free to choose the **section** that will apply, but only one (1) **section**, and the applicable limit of indemnity of that section shall be the maximum amount payable by **us** under this **policy**.

20.64.8 Any sub-limit of indemnity stated applies as if it was the limit of indemnity for the claims specified for that sub-limit of indemnity and is deemed to be part of and not in addition to the limit of indemnity specified in the **schedule**.

20.64.9 The limit of indemnity will not be increased by purchase of an **extended reporting period**.

20.65 Loss

20.65.1 For **section C** loss means **your** direct financial loss and includes **your** legal liability to a **client** covered under clause 5.1.2 - Theft of client's money, security, funds or property.

- 20.65.2 But under **section C** loss shall not include salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other **employee** benefits paid or payable by **you** or any **employee plan** where earned in the normal course of employment.
- 20.65.3 For **section D** loss means any amount which **you** are legally liable to pay resulting from a **claim** including **defence costs**, **pre-investigation** costs, **investigation** costs, awards of damages (including punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages. Enforceability of this paragraph for punitive, exemplary and multiple damages shall be governed by such applicable law that most favours coverage for such damages. Loss includes any amount covered under any extension cause above or given by endorsement.
- 20.65.4 But under **section D** loss shall not include:
- a) any fines and penalties except to the extent covered under clause 6.2.3 - Civil fines and penalties;
 - b) taxes;
 - c) remuneration, cost of the time of any **insured person**, or costs or overheads of any **insured entity** except to the extent covered under clause 6.2.4 - Court attendance.
 - d) amounts which are uninsurable under the applicable law of the **claim**; or
 - e) any sum payable pursuant to a financial support direction or contribution notice issued by the UK Pensions Regulator;
 - f) with respect to any **claim** in connection with **employment practices liability** only, loss shall not include:
 - g) compensation payable in respect of contractual or statutory notice periods;
 - i) **employment-related benefits**;
 - ii) any liability or costs incurred by any **insured** to modify any building or property in order to make the building or property more accessible or accommodating to a disabled person;
 - iii) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practice claim** or the costs of reinstatement of any **employee**.

20.66 Matter

Matter means 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**. Matter will include any alteration or addition made by a **hacker**.

20.67 Multimedia activities

Multimedia activities means the publishing, dissemination, releasing, gathering, transmission, production, webcasting or other distribution of **matter**.

20.68 Manager

20.68.1 Any natural person who was, is or during the **period of insurance** becomes:

- a) a director or officer of any **company**, but not an external auditor or insolvency office-holder of any **company**;
- b) an **employee** of any **company**;
- c) a shadow director;
- d) a de facto director; or
- e) an **outside company** director;

but only when and to the extent that such manager is acting for and on behalf of the **company** in any of the capacities referred to in a) to e) above.

20.68.2 manager is extended to include:

- f) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- g) the administrator, heirs, legal representatives, or executor of a deceased, incompetent insolvent or bankrupt estate;

of the manager referred to in a) to e) above with respect to the acts, errors or omissions of such manager.

20.69 Member

Member mean any member of a limited liability partnership including without limitation a designated member save that such member shall only be an insured for the purposes of this insurance if and insofar as any claim(s) arise out of **business services** carried on by the member for or on behalf of the **firm(s)** named in the **schedule**.

20.70 Money

20.70.1 For **section G** money means:

both **negotiable money** and **non-negotiable money**.

20.70.2 For **section C** money means:

paper currency, coin, bank notes, bullion, cheques, travellers' cheques, registered cheques, postal orders and money orders. Money shall not include **funds**.

20.71 Negotiable money

Negotiable money means cash, bank and currency notes, cheques, postal orders, money orders, crossed bankers drafts, current postage stamps, savings stamps and certificates National Insurance stamps, trading stamps, gift tokens, customer redemption vouchers, credit card company sales vouchers, credit card counterfoils travellers tickets, phonecards (excluding phonecards held in stock for resale), VAT purchase receipts, contents of franking machines and insofar as they are not otherwise insured holiday-with-pay stamps and luncheon vouchers.

20.72 Non-negotiable money

Non-negotiable money means crossed warrants, crossed cheques, crossed giro drafts, crossed postal and money orders, crossed bankers' drafts, crossed National Girobank cash cheques, premium bonds, savings bonds, stamped National Insurance cards , National Savings Certificates, VAT purchase invoices, and credit card sales vouchers all belonging to **you** or for which **you** have accepted responsibility.

20.73 Non-executive director

Non-executive director means any natural person who serves as a non-executive **director or officer**.

20.74 North America

North America means the United States of America or its territories or possessions or Canada.

20.75 Nuclear hazards

Nuclear hazards means:

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

20.76 Official body

Any regulator, disciplinary body, criminal authority, government body, government agency, official trade body, or any other body that is empowered by statute to investigate **your** affairs.

20.77 Offshore

Offshore means from the time of embarkation onto a conveyance at the point of final departure from land to any offshore rig or any offshore platform and until such time of disembarkation from a conveyance onto land upon return from any offshore rig or any offshore platform.

20.78 Outside company

Any company or non-profit entity to which the **director or officer** was or is appointed as a **director or officer** at the request, order or direction of the **company** provided that such outside company is not:

- a) a subsidiary;
- b) incorporated or domiciled in the **North America**;
- c) or has its securities listed on a security exchange or market within **North America**.
- d) is a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity.

20.79 Outsource

20.79.1 Outsource shall mean **your** retention and authorisation of a person or an organisation to perform a normal administrative service on **your** behalf, provided that:

- a) such service is performed under a written contract; and
- b) **you** retain the right to audit the performance of such service; and
- c) **you** can demonstrate that they have vetted the person or organisation for competency financial stability and honesty prior to **your** retention and authorisation of such person organisation to perform such service.

20.80 Parent

Parent means a company which by itself, or in concert with other companies with the same majority ownership or control as itself:

- 20.80.1 controls the composition of the board of directors, of the **insured**; or
- 20.80.2 controls more than half the voting power of the **insured**; or
- 20.80.3 holds more than half of the issued share capital of the **insured**.

20.81 Pension trustee

20.81.1 any natural person who was, now is or shall be:

- a) a **pension trustee** or administrator of the **plan** or constructive trustee of the **plan**;
- b) a director or officer or **employee** of a **company, plan** or corporate **pension trustee company** established to act as a **pension trustee** of the **plan**, but not an external auditor or insolvency office-holder;

but solely while acting in the capacity as a **pension trustee** or administrator of any **plan**.

- 20.81.2 any corporate pension trustee company established to act as a **pension trustee** or administrator of the **plan**;
- 20.81.3 any natural person who was, is or during the **period of insurance** becomes responsible for internal dispute resolution procedures of a **plan** as defined in section 50 of the Pensions Act 1995.

20.82 Pension trustee liability advice

20.82.1 Confidential legal advice of up to one hour per enquiry deriving from the same or related facts with respect to:

- a) pension legislation or regulation;

- b) a matter or circumstance that a **pension trustee** may reasonably expect to give rise to a covered or potentially covered **claim** in connection with **pension trustee** liability.

20.83 Period of insurance

Period of insurance means the period shown as such on the **schedule** which time is taken as Greenwich Mean Time unless otherwise stated.

20.84 Person insured

For **section M** – Legal expenses, person insured means **you** and **your** directors, partners, managers, employees and any other individuals declared to **us**.

20.85 Plan

20.85.1 any past, present or future employee benefit or welfare benefit plan; or

20.85.2 any past or present pension plan;

established, administered or sponsored by **you** for the sole benefit of **your employees**;

20.85.3 any pension, employee benefit or welfare benefit plan merged, transferred or terminated prior to or during the **period of insurance**;

20.85.4 any pension, employee benefit or welfare benefit plan created or acquired by **you** during the **period of insurance**.

20.86 Policy

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

20.87 Pollutant

Pollutant means any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance or contaminant including, but not limited to, asbestos, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed. Legionella bacteria are deemed not to be a pollutant for the purpose of this insurance.

20.88 Pollution

Pollution means:

20.88.1 the actual alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;

20.88.2 any cost, expense, claim or suit arising out of any request demand or order as a result of actual alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that **you** or any other insured party test for monitor, clean up, remove, contain, treat, detoxify or neutralise or in any way respond to or assess the effects of **pollutants**.

20.89 Preferred law firm or tax consultancy

For **section M** – Legal expenses, preferred law firm or tax consultancy means a law firm, barristers' chambers or tax expert **DAS** chooses to provide legal or other services. These specialists are chosen as they have the proven expertise to deal with the **person insured's** claim and must comply with **DAS'** agreed service standard levels, which they audit regularly. They are appointed according to the **DAS standard terms of appointment**.

20.90 Premises

Premises means the buildings and land shown in the schedule being occupied by **you** for the purpose of the **business**.

20.91 Pre-investigation

Pre-investigation means:

- 20.91.1 a raid or on-site visit to any **company** by an **official body**, first occurring during the **period of insurance**, that involves the production, review, copying or confiscation of records, or the interview of any **insured person**; or
- 20.91.2 an internal enquiry by the **company** into the affairs of the **company** or an **insured person** requested by a regulator or official body (except for employment practices related bodies), following a formal written notification by the **company** informing the regulator of an actual or potential material breach of an **insured's** legal or regulatory duties, in which an **insured person** in his capacity as such is requested in writing to participate;
- 20.91.3 but pre-investigation shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a **company's** and/or regulator's normal review or compliance process.

20.92 Pre-Investigation costs

Pre-investigation costs means the reasonable legal fees, costs and expenses of each **insured person** (but not including any remuneration of any **insured person** or employee of the company) incurred directly with respect to preparing any written notice or reports to any official body in connection with any **pre-investigation**, up to the sub-limit of indemnity specified in the schedule. These will be part of, and not in addition to, the **limit of indemnity**.

20.93 Product

Product means any property including packaging, containers, labels and instructions for use after it has left **your** custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced altered, or repaired by or on **your** behalf.

20.94 Property

For **section C**, property means property but excluding **money, tangible securities or funds**.

20.95 Property damage

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

20.96 Public relations consultants

Public relations consultants approved by **us** but retained by **you**.

20.97 Public relations services

Services provided by the **public relations consultants** directly to mitigate the adverse effect or potential adverse effect on an **insured person's** reputation.

20.98 Reasonable prospects

For **section M** – Legal Expenses, reasonable prospects means:

- a) For civil cases, the prospects that the **person insured** will recover losses or damages or a reduction in tax or National Insurance liabilities (or obtain any other legal remedy that **DAS** have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%. **DAS**, or a **preferred law firm** or **tax consultancy** on their behalf, will assess whether there are **reasonable prospects**.
- b) For criminal cases there is no requirement for there to be prospects of a successful outcome, however for appeals the prospects must be at least 51%.

20.99 Retroactive date

Retroactive date means that coverage shall only apply for acts, errors or omissions first committed or alleged to have been first committed after the date specified in the **schedule** for the relative **section** of insurance.

20.100 Robbery

Robbery means the unlawful taking by a third party (not being an **employee**) from the custody of an **employee**, or any other person authorised by **you**, by violence or threat of violence, in the presence of such person.

20.101 Safe burglary

Safe burglary means the unlawful forcible or violent entry by a third party (not being an employee) as shown by visible marks on a locked safe or vault situate on the **insured's** premises.

20.102 Schedule

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

20.103 Section

Section means all or any individually lettered sections of this **policy** that forms part of the insurance contract but only if stated as 'operative' in the **schedule**.

20.104 Statement of fact

Statement of fact means the document we send to you that records all the information supplied to **us** by or on **your** behalf for the assessment of **your** eligibility for this insurance and its terms including the premium applicable to this **policy**.

20.105 Stock offering

Stock offering means the initial public offer of any of the **company's** own securities, or if in the United States of America any offering of securities by the **company** except pursuant to Rule 144A of the Securities and Exchange Commission.

20.106 Subsidiary company

Subsidiary company means:

20.106.1 any company in respect of which the **insured** (either directly or indirectly through one or more of its subsidiary companies):

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

20.106.2 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 **North America**) which is acquired or created on or subsequent to the inception date of this **policy** and of which the total assets do not exceed the amount stated on the schedule.

20.106.3 any other company that the **insurer** has given prior written consent to for its inclusion as a subsidiary company under this **policy**.

20.107 Sum insured

Sum insured means the sum specified as the sum insured in the **schedule**.

20.108 Take-over or merger

Take-over or merger means:

20.108.1 any sale of the majority of the issued share capital of the **insured**; or

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

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

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

20.108.3 in the case of an **insured** which is a partnership, a merger with another partnership or the appointment of new partners (other than from existing **employees** of the partnership **insured**) such that the number of partners in the partnership immediately after such merger or appointment(s) is more than two hundred percent (200%) of the number of partners in the partnership Insured immediately before such merger or appointment(s).

20.108.4 In the case of a **trust scheme** the merger of the **company** or the **trust scheme** with or acquisition by another entity such that the **trust scheme** is wound up or merged with another **trust scheme** or otherwise loses its identity.

20.109 Tangible securities

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

20.110 Tangible securities fraud

Tangible securities fraud means the forging, counterfeiting or fraudulent alteration of **tangible securities** which the **insured** or financial institution acting on their behalf has relied upon.

20.111 Territorial limits

20.111.1 For **section A** – Professional liability, territorial limit means the Economic European Area;

20.111.2 For **section J** – Terrorism, territorial limit means England, Scotland and Wales;

20.111.3 For **sections K** and **L** only, territorial limit means:

- a) anywhere within the **United Kingdom** but excluding **offshore**;
- b) elsewhere in the world (excluding **offshore**) in connection with temporary visits undertaken in the course of the **business** by any person normally resident in the **United Kingdom**;
- c) elsewhere in the world in respect of **products**.

20.111.4 For **section M** – Legal expenses, territorial limit means:

- a) for insured incidents 16.3 Legal Defence (excluding 16.3.3 -Statutory notice appeals), and 16.5.2 Bodily injury:
the European Union, the Isle of Man, the Channel Islands, Albania, Andorra, Bosnia Herzegovina, Croatia, Gibraltar, Iceland, Liechtenstein, Macedonia, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland and Turkey.
- b) for all other insured incidents:
the **United Kingdom** and any other extension agreed with **us**.

20.111.5 For all other **sections** territorial limit means worldwide.

20.112 Terrorism

20.112.1 For **sections G** to **J**, terrorism means for all territories other than England, Wales and Scotland;

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political

division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group (s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) endangers life other than that of the person committing the action; or
- b) involves violence against one or more persons; or
- c) involves **damage** to property; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

20.112.2 For **sections G to J** for England, Wales and Scotland terrorism means:

An act of terrorism includes any act of any persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing by force or violence, of Her Majesty's government in the **United Kingdom** or any other government de jure or de facto

20.112.3 For all other **sections** terrorism means:

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, or
- b) disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- 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.

20.113 Theft

20.113.1 Solely in relation to **section C** theft shall mean fraud, dishonest taking or obtaining of the **property, money, tangible securities and funds** provided for in the relevant insuring clause with the intention of permanently depriving the owner of such **property, money, tangible securities and funds**.

20.113.2 Solely in relation to **section E** theft shall mean the taking without lawful authority, or the dishonest appropriation of, money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to or held in trust for the **trust scheme**, or for which the **trust scheme**, or the **trustees**, are legally responsible.

20.114 Trustee(s)

Trustee(s) shall mean any natural person or **corporate body trustee** who was or is or may hereafter become a trustee of the **trust scheme**, including any director of a **corporate body trustee**.

20.115 Trust scheme

Trust scheme shall mean a trust scheme (as defined by Section 124 of the Pensions Act 1995).

20.116 Turnover

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

20.117 United Kingdom

United Kingdom means Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

20.118 Vat dispute

For **section M** – Legal expenses, vat dispute means a dispute with HM Revenue & Customs following the issue of an assessment, written decision or notice of a civil penalty relating to **your** VAT affairs.

20.119 War

War means 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 or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

20.120 Wrongful act

Wrongful act means any actual or alleged wrongful act or omission including any:

20.120.1 misstatement;

20.120.2 misrepresentation;

20.120.3 breach of trust;

20.120.4 breach of duty;

20.120.5 breach of warranty of authority;

20.120.6 libel or slander;

20.120.7 by the **trustees** or **administrator** or any matter claimed against them by reason solely of such person's capacity as **trustee** or **administrator**.

21 Complaints

21.1 What you should do?

We strive to provide an excellent service to all **our** customers but occasionally things can go wrong. **We** take all complaints seriously and endeavour to resolve all customers' problems promptly. If **you** have a question or complaint about this insurance or the conduct of **your** intermediary **you** will contact that intermediary in the first instance.

If **you** wish to contact **us** directly **you** should write to the complaints address shown below:

For **sections A- K** please contact:

Plantation Place, 30 Fenchurch Street, London, EC3M 3BD,
tel: +44 (0)20 7105 4000, fax: +44 (0)20 7105 4019. enquiries@qbeeurope.com,

In the event **you** remain dissatisfied and where the **insurer** is or includes a Lloyd's syndicate it may be possible in certain circumstances to refer the matter to the policyholder and Market Assistance Department at Lloyd's, One Lime Street, London EC3M 7HA; Tel: 020 7327 5693.

For **section M** please contact:

our customer relations department at **our** head office address shown below. Or **you** can telephone **us** on 0117 934 0066 or email **us** at customerrelations@das.co.uk

our head and registered office is: DAS Legal Expenses Insurance Company Limited, DAS House, Quay Side, Temple Back, Bristol BS1 6NH.

Please quote the **policy** number or claim number as appropriate in any correspondence.

If an eligible complainant and the matter has not been resolved to **your** satisfaction **you** may contact:

The Financial Ombudsman Service, South Quay Plaza 2, 183 Marsh Wall, Docklands, London E14 9SR.

Making a complaint to the Financial Ombudsman Service (FOS) does not affect **your** rights under this **policy**, but if **you** are not an eligible complainant then the informal complaint process ceases.

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

21.2 About the Financial Ombudsman Service (FOS)

21.2.1 Eligible complainants are a

- a) private policyholder, or
- b) commercial policyholder or charity with a **turnover** under £1m, or
- c) trust with assets under £1m

From 1 November 2009 eligible complainants will be:

- private individuals *and*
- micro-enterprises'.

'Micro-enterprises' will be able to bring complaints to the ombudsman as long as they have an annual turnover of under EUR2 million and fewer than ten (10) employees.

21.2.2 The FOS will only consider a complaint if **you** are an eligible complainant and if:

- a) **we** have been given an opportunity to resolve it and
- b) **we** have sent **you** a final response letter and **you** have referred **your** complaint to the FOS within six (6) months of **our** final response letter; or
- c) **we** have not responded to **your** complaint with a decision within forty (40) days.

21.3 Financial Services Compensation Scheme

We Market and Lloyd's underwriters are covered by the Financial Services Compensation Scheme. **you** may be entitled to compensation from the Scheme if **we** are unable to meet **our** obligations under this contract.

Entitlement to compensation under the Scheme depends on the type of business and circumstances of the claim. Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU or from their website (www.fscs.org.uk).

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