

QBE Surveyors'

Surveyors'

Professional Liability 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 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**.

1.4.1 For all claims except the Legal expenses section please either:

- a) contact your insurance broker; or
- b) contact QBE Claims, Plantation Place, 30 Fenchurch Street, London, EC3M 3BD. Email details to smepiclaims@uk.qbe.com

1.4.2 For claims under Legal expenses section please contact **DAS**:

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

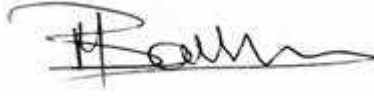
Telephone **us** on **0117 9330618**

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.

1.5 Signature

In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Underwriting Officer - Property, Casualty and Motor.

A handwritten signature in black ink, appearing to read "H. Paul", is written over a horizontal line.

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 - 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;

claim first made; and/or

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:

- a) the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or mechanically propelled vehicle;
- b) 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:

- a) such **claim** is:
first made against **you**; and/or
arises out of any **circumstance** which **you** shall first notify;

during the **period of insurance**.

- b) **we** shall not be liable for any **claim**:
directly or indirectly resulting from **asbestos surveys** carried out by the **insured**; or
arising out of or in any way involving any **bodily injury** or fear of suffering **bodily injury**.
- f) **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:

- a) 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 - Legal expenses

4.1 Legal expenses cover

4.1.1 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.

4.1.2 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.

4.1.3 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**.

4.2 Employment disputes and compensation awards

4.2.1 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.

4.2.2 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 4 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**.

4.2.3 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.*

4.2.4 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.

4.3 Legal defence

At **your** request

4.3.1 **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.
- 4.3.2 **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**.
- 4.3.3 **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.
- 4.3.4 **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 4. a) and b) the **territorial limit** shall be any place where the act applies;
 - d) in respect of clause 4 c), at the time of the insured incident **you** have registered with the information commissioner.
- 4.4 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.
- 4.5 Property protection and bodily injury**
 - 4.5.1 **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.*
 - 4.5.2 **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.
- 4.6 Tax protection**
 - 4.6.1 **A full enquiry or aspect enquiry.**
 - 4.6.2 **A cross-tax enquiry.**
 - 4.6.3 **An employer compliance dispute.**
 - 4.6.4 **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**.*

4.7 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.

4.8 Specific Legal expenses limitations and exclusions

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

4.8.1 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.

4.8.2 **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.

4.8.3 **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.

4.8.4 **Property protection and bodily injury**

a) **Property Protection**

Any claim relating to the following:

- i) a contract entered into by **you**;
- ii) goods in transit or goods lent or hired out;
- iii) 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**;
- iv) mining subsidence;
- v) defending **your** legal rights other than in defending a counter-claim;
- vi) 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.
- vii) 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.

4.8.5 **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.

4.8.6 **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.

4.9 General legal expenses limitations and exclusions

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

- 4.9.1 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.
- 4.9.2 **Legal expenses costs** incurred before the written acceptance of a claim by **us**.
- 4.9.3 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.
- 4.9.4 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**.
- 4.9.5 Any claim relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.
- 4.9.6 Any claim relating to rights under a franchise or agency agreement entered into by **you**.
- 4.9.7 Any insured incident deliberately or intentionally caused by a **person insured**.
- 4.9.8 A dispute with **us** not otherwise dealt with under clause 4.
- 4.9.9 Any claim relating to a shareholding or partnership share in the **business** shown in the **schedule**.
- 4.9.10 Judicial review, coroner's inquest or fatal accident inquiry.
- 4.9.11 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.
- 4.9.12 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.

- 4.9.13 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.
- 4.9.14 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.
- 4.9.15 Any claim relating to written or verbal remarks that damage the **person insured's** reputation.
- 4.9.16 Any claim where a **person insured** is not represented by a law firm, barrister or tax expert.

4.10 Legal expenses other terms and conditions

- 4.10.1 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.
- 4.10.2 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.
- 4.10.3 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**.
- 4.10.4 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.
- 4.10.5 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**.

- 4.10.6 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.
- 4.10.7 **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.
- 4.10.8 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.
- 4.10.9 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.
- 4.10.10 **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.
- 4.10.11 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.
- 4.10.12 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.
- 4.10.13 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.

5 Claim procedure

The due observance and fulfilment of the provisions of the 'Claim notification' and 'Your duties' clauses under are a condition precedent to **our** liability for any claim under this **policy**.

5.1 Claim notification: Section – Professional Liability

5.1.1 **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.

5.1.2 **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**.

5.1.3 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 smepicclaims@uk.qbe.com

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

5.2 Claim notification - Section – Legal Expenses

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.

5.3 Your duties – Professional Liability

5.3.1 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**.

- 5.3.2 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**.
- 5.3.3 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.

5.4 Your duties – Legal Expenses

Please refer to Legal Expenses

5.5 Our rights

- 5.5.1 Claims will be handled and administered by the **insurer** or such parties as **we** in **our** absolute discretion may determine.
- 5.5.2 **We** shall only be liable to pay **defence costs** to which we has given our prior written consent, such consent not to be unreasonably withheld.
- 5.5.3 **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.
- 5.5.4 **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.

5.6 Recoveries

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

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

5.7 Subrogation

- 5.7.1 For each and every claim **you** and any person acting on **your** behalf must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit

that may give rise to a claim under this insurance and must assist **us** in all respects in exercising such rights if requested to do so.

- 5.7.2 **We** agree not to exercise such rights against **your** principal, partner, director or employee 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**.

6 General conditions

6.1 Applicable law

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 the head office of the **insured** 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 the head office of the **insured** is located and they are subject to the exclusive jurisdiction of that court.

6.2 Assignment

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

6.3 Cancellation

6.3.1 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 **your** last known address. **You** shall be entitled to the return of a proportionate part of the premium paid in respect of the unexpired term of this **policy** provided that there have been:

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

during the current **period of insurance**

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

6.3.2 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.

6.4 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 the **insurer** and **insured** 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.

6.5 Difference in conditions

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**.

6.6 Disputed defence or appeal: Section Professional liability only

6.6.1 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.

6.6.2 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.

6.6.3 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.

6.6.4 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.

6.7 Fraud: Section Professional liability only

6.7.1 All information supplied by **you** in connection with the application for insurance whether supplied by or on **your** behalf will be incorporated into and forms part of this **policy**. It shall be a condition precedent to **our** liability under this **policy** that all information is true so far as is within **your** knowledge or could, with reasonable diligence, have been ascertained.

6.7.2 Fraud and dishonesty

This **policy** shall be voidable in the event of fraud 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 in the event of dishonest misrepresentation, misdescription or non-disclosure of any material particular relevant to the risk insured or any claim hereunder.

Further, any claim payment made to **you** resulting from any fraudulent or dishonest means or device or in the event of dishonest misrepresentation, misdescription or non-disclosure must be repaid to **us**.

6.8 Material alteration and disclosure: Section Professional liability only

6.8.1 **You** shall give **us** written notice as soon as practicable of any change in circumstances affecting the nature of your business and/or business services 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 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**.

6.8.2 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.

6.9 Minimisation of risk

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

6.9.2 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**.

6.9.3 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**.

6.10 Non Contribution: Section Professional liability only

If at the time of any claim under this **policy** there is any other valid and collectible insurance available to the **insured** or any other party covered by this insurance, other than insurance that is specifically stated to be in the excess of this **policy** and names the **insured** or any other party covered by this insurance for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.

6.11 Observance

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**.

6.12 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.

6.13 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.

6.14 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**.

6.15 Sanctions and embargo

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

- 6.15.1 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.
- 6.15.2 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.

6.16 Severability

- 6.16.1 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**.
- 6.16.2 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**.

6.17 Special institution condition

- 6.17.1 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,
- 6.17.2 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**.
- 6.17.3 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.

6.18 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.

7 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, 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, regulation or trade terms of contract 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**.

7.1 Appointed representative

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.

7.2 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.

7.3 Aspect enquiry

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.

7.4 Bodily injury

7.4.1 For Section – Professional Liability, bodily injury means death and injury, illness or disease whether bodily or mental.

7.4.2 For Section - Legal expenses, bodily injury means death or injury caused by a specific or sudden accident.

7.5 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.

7.6 Circumstance

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

7.7 Claim

Claim means:

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

7.7.2 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

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

7.7.4 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.

7.8 Client

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

7.9 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.

7.10 Company

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

7.11 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.

7.12 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.

7.13 Cross tax enquiry

Cross tax enquiry means a **full enquiry** which includes a review of Value Added Tax and/or Employer Compliance.

7.14 DAS

DAS means DAS Legal Expenses Insurance Company Limited.

7.15 DAS standard terms of appointment

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).

7.16 Date of occurrence

date of occurrence means:

- 7.16.1 for civil cases (other than under insured incident – 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);

- 7.16.2 for criminal cases, the date the **person insured** began, or is alleged to have begun, to break the law;
- 7.16.3 for insured incident - 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.
- 7.16.4 for insured incident - 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**.
- 7.16.5 for insured incident - Legal defence - statutory notice appeals, the date when the **person insured** is issued with the relevant notice and has the right to appeal.

7.17 Defence cost(s)

- 7.17.1 For section – Professional liability defence cost(s) means:
 - a) all legal costs, charges, fees, expenses including witness costs and advances in respect of the same (other than **your** directors, partners or **employees** salaries, commissions, expenses or other benefits);
 - b) 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**; and
 - c) 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;

incurred with **our** prior written and **our** continuing consent (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or settlement of any **claim** and/or **circumstance(s)**.
- 7.17.2 For section – Legal expenses defence cost(s) means:
 - 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.

7.18 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.

7.19 Employee

- 7.19.1 For Section – Professional Liability employee means any person including trainees and apprentices acting under a contract of service with **you** in respect of the conduct of **business services**.
- 7.19.2 For Section – Legal expenses employee means any person whilst engaged under a contract of employment or apprenticeship with **you**

7.20 Employer compliance dispute

For Section – 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.

7.21 Employment practice

Employment practice means:

- 7.21.1 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
- 7.21.2 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
- 7.21.3 defamation relating to a person's job skill, job performance, qualifications for employment, professional reputation, disciplinary history, or termination of employment; or
- 7.21.4 unfair or wrongful termination of employment or refusal to hire; or
- 7.21.5 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.

7.22 Environmental audit

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

7.23 Excess

- 7.23.1 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.
- 7.23.2 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.
- 7.23.3 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.

7.24 Full enquiry

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.

7.25 Independent lawyer

Independent lawyer means:

- 7.25.1 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
- 7.25.2 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.

7.26 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.

7.27 Insured/you/your

Insured/you/your means

- 7.27.1 the person(s) or **company** named in the **schedule**; or
- 7.27.2 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
- 7.27.3 the partners, directors or **members** of the practice during the **period of insurance**; or
- 7.27.4 former partners, former directors or former **members** of the practice; or
- 7.27.5 (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
- 7.27.6 any retired partner, director or **member** of the practice remaining as a consultant to the practice; or
- 7.27.7 (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;
- 7.27.8 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.
- 7.27.9 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**.

7.28 Insurer/we/our/us

Insurer/we/our/us means:

- 7.28.1 For Section – Professional Liability insurer/we/our/us means:
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.
- 7.28.2 For Section – Legal expenses insurer/we/our/us means:
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.

7.29 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**.

7.30 Legal expenses costs

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.

7.31 Limit of indemnity

7.31.1 For Section – Professional Liability

- a) Limit of indemnity means the amount specified in the **schedule**, which shall be the maximum amount payable by **us** in respect of any one **claim**:
 - i) regardless of the number of insured parties, persons or organisations bringing **claims** against **you** and
 - ii) regardless of the number of **claims** made by **you**

7.31.2 For Section – Legal Expenses

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

7.31.3 For all **sections**

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

7.31.5 Where a **claim** 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**.

7.31.6 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**.

7.32 Matter

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

7.33 Multimedia activities

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

7.34 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**.

7.35 North America

North America means the United States of America or its territories or possessions or Canada.

7.36 Nuclear hazards

Nuclear hazards means:

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

7.37 Outsource

- 7.37.1 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.

7.38 Parent

Parent means a company which by itself, or in concert with other companies with the same majority ownership or control as itself:

- 7.38.1 controls the composition of the board of directors, of **yours**; or
- 7.38.2 controls more than half the voting power of **yours**; or
- 7.38.3 holds more than half of the issued share capital of **yours**.

7.39 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.

7.40 Person insured

For Section – Legal expenses, person insured means **you** and **your** directors, partners, managers, employees and any other individuals declared to **us**.

7.41 Policy

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

7.42 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.

7.43 Pollution

Pollution means:

- 7.43.1 the actual alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;
- 7.43.2 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**.

7.44 Preferred law firm or tax consultancy

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**.

7.45 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.

7.46 Reasonable prospects

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%.

7.47 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.

7.48 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.

7.49 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**.

7.50 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**.

7.51 Subsidiary company

Subsidiary company means:

- 7.51.1 any company in respect of which **you** (either directly or indirectly through one or more of **your** subsidiary companies):
 - a) control the composition of the board of directors; or
 - b) control more than half the voting power at a general meeting of shareholders; or
 - c) hold more than half of the issued share capital (regardless of class of share);
- 7.51.2 any company as defined above (other than any company part of whose issued share capital is offered to the public or otherwise traded on a recognised exchange in **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.

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

7.52 Take-over or merger

Take-over or merger means:

- 7.52.1 any sale of the majority of the issued share capital of **yours**; or
- 7.52.2 **your** merger with or acquisition by another entity such that **you** are not the surviving entity and no longer:
- a) control the composition of the board of directors; or
 - b) control more than half the voting power; or
 - c) hold more than half of the issued share capital.
- Except that this definition shall not apply if any sale of **your** shares alters the status of the **insured** from that of a private company to that of a public company or vice versa.
- 7.52.3 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).
- 7.52.4 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.

7.53 Territorial limits

- 7.53.1 For Section – Professional liability, territorial limit means the Economic European Area;
- 7.53.2 For Section – Legal expenses, territorial limit means:
- a) for insured incidents - Legal Defence (excluding 4.3.3 -Statutory notice appeals), and 4.5.2 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**.

7.54 Terrorism

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.

7.55 United Kingdom

United Kingdom means Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

7.56 Vat dispute

For section – 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.

7.57 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**.

8 Complaints

8.1 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 its intermediary they 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 the Professional Indemnity sections please contact:

Plantation Place, 30 Fenchurch Street, London, EC3M 3BD,
tel: +44 (0)20 7105 4000, fax: +44 (0)20 7105 4019.

For the Legal expenses section 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.

8.2 About the Financial Ombudsman Service (FOS)

8.2.1 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.

8.2.2 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.

8.3 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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