

Professional Liability Insurance
Marketing, Advertising and Communication Consultants
QBE PI MAC



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1 Our agreement in general

1.1 Parties to this agreement

This Professional Liability Insurance for Marketing, Advertising and Communication Consultants is a contract between **you** and **us** and this document, together with 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.

1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **you** in clause 1.1 above, have specific meanings attached to them as set out in clause 6, the General definitions and interpretation section of this document.

1.3 Primary purpose of the policy

By this **policy**, **we** agree, subject to the **policy's** terms, limitations, exclusions and conditions, to:

1.3.1 indemnify **you** up to the **limit of indemnity** for all sums that **you** become legally liable to pay as compensatory damages, including claimant costs recoverable from **you**; and

1.3.2 pay **defence costs**; and

1.3.3 pay **document** restoration costs and fidelity losses; and

arising from **claims** first made against **you** during the **period of insurance** and arising from breach of professional duty in the conduct of the **business**, and

1.3.4 pay legal expenses arising during the **period of insurance** up to the **limited of indemnity**

to the extent more fully described in clauses 2 and 3 below and stated as 'operative' in the **schedule**.

1.4 Policy structure

1.4.1 Clauses 2 and 3 set out the scope of main coverage; additional costs and expenses; extra coverage and the circumstances in which **our** liability to **you** is limited or may be excluded. Finally this clause sets out **our** other terms and conditions.

1.4.2 The insurance provided under clause 3 is underwritten by DAS Legal Expenses Insurance Company Limited.

a) DAS has a 24 hour helpline, the details of which are set out in clause 3.11.

b) DAS claims and complaints procedures are set out in clauses 4.3.4 – 4.3.8 and 7.1 respectively.

1.4.3 Clauses 4 - 7 set out **our**:

a) claims handling terms and conditions, including conditions precedent;

b) general terms and conditions, including further conditions precedent;

c) definitions;

d) complaints procedure.

1.5 Policy period and premium

1.5.1 The **policy** will provide insurance as described in clauses 1.3 and 1.4 above for the **period of insurance** provided the premium and other charges are paid to and accepted by **us** on or before the payment date shown in the **schedule**. The premium is deemed paid and accepted on receipt by **us** or the intermediary appointed to place this insurance with **us**.

1.5.2 Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

- 1.5.3 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 day after being posted if sent by pre-paid letter post properly addressed.

1.6 Basis for the policy

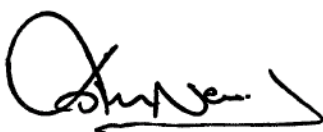
- 1.6.1 All information supplied by **you** or on **your** behalf in connection with the application for insurance including any **proposal** form, application form or otherwise will be incorporated into and form the basis of the **policy**. It shall be a condition of the **policy** that all such information is true so far as is within **your** knowledge or could, with reasonable diligence, have been ascertained.
- 1.6.2 It is a further condition of the **policy** that any material change in, or material addition to, the information mentioned in clause 1.6.1, either before or during the **period of insurance**, shall be notified to **us** in writing as soon as practical after **you** become aware of any such change or addition and **we** will continue the **policy** on such terms and conditions **we** may determine.
- 1.6.3 In the event of a breach of any provision of this clause 1.6, 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 **we** may determine.

1.7 Privacy

- 1.7.1 **We** collect non-public personal information about **you** and any **other insured party** from the following sources:
- a) information the **we** receive from **you** on applications or other forms;
 - b) information about **your** transactions with **us**, **your** subsidiary, parent and or other group companies, or others;
 - c) information **we** receive from consumer reporting agencies.
- 1.7.2 **We** do not disclose any non-public personal information relating to **you** and/or any **insured person** to anyone except as is necessary in order to provide **our** products or services to **you** or otherwise as it is required or permitted by law (e.g., a subpoena, fraud investigation, regulatory reporting etc.).
- 1.7.3 **We** restrict access to non-public personal information relating to **you** and/or any **other insured party** to **our** employees, subsidiary, parent and or other group companies and their employees or others who need to know that information to service **your** account.
- 1.7.4 **We** maintain physical, electronic, and procedural safeguards to protect **your** non-public personal information. As a consequence, any non-public personal information disclosed to one such employee or company is not deemed disclosed to all such employees or companies.

1.8 Signature

In evidence of **our** intention to be bound by this insurance, it prints the signature of its Chief Operating Officer below.



2 Section A – Professional liability

2.1 Professional liability cover

2.1.1 Civil liability

We agree to indemnify **you** against civil liability to pay compensatory damages or awards (including where applicable claimants' legal costs and expenses) for any **claim**:

- a) first made against **you** and/or
- b) arising out of any **circumstance(s)** which **you** first notify,

during the **period of insurance** to **us** in accordance with the terms of this **policy** in the conduct of the **business**, as a result of breach of duty incurred arising from any act, error or omission committed or alleged to have been committed by any consultant, sub-contractor or agent for whose acts, errors or omissions **you** are legally liable.

2.2 Additional professional liability costs and expenses

2.2.1 Court Attendance Compensation

With **our** prior written consent **we** will pay compensation to **you**, in the event that the legal advisers acting on **your** behalf require any of **your** employees 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 policy at the following rates for each day or part thereof on which attendance is required:

- a) any principal partner, member or director GBP200
- b) any employee GBP100
- c) other relevant party up to GBP200.

2.2.2 Defence costs

Following any event which is or may be the subject of indemnity under this **section** **we** agree to indemnify **you** for **defence costs** incurred provided **you** have **our** written consent and that if the **limits of indemnity** under clause 2.1 are exhausted by the payment or settlement of any **claim** or loss **our** liability to pay **defence costs** in respect of that **claim** or loss shall be limited to such proportion of those **defence costs** as the **limit of indemnity** available for payment or settlement of that **claim** or loss bears to the total payment (including where applicable claimants' costs) required to dispose of that **claim** or loss.

2.3 Professional liability extensions

2.3.1 Breach of confidence and privacy

We will indemnify **you** against all sums which **you** shall become legally liable to pay as a result of any **claim** against **you** during the **period of insurance** alleging unintentional breach of confidence, breach of confidential duty (including any breach of data protection legislation), infringement of any right to privacy, or misuse of information which is either confidential or subject to statutory restrictions on its use.

2.3.2 Computer virus transmission

We will indemnify **you** against sums which **you** shall become legally liable to pay as a result of any **claim** against **you** during the **period of insurance** for any unintentional transmission by **you** of any **computer virus** that causes loss or damage to any wholly independent third party except that **our** liability to indemnify under this clause 2.3.2 shall not exceed the sub-**limit of indemnity** of GBP250,000 which amount is inclusive of **defence costs** and the maximum payable any one **claim** and in the aggregate during the **period of insurance**.

2.3.3 Dishonesty or fraud

We will indemnify **you** against all sums which **you** shall become legally liable to pay as a result of any **claim** against the **business** during the **period of insurance** arising directly or indirectly from any dishonest, fraudulent, malicious or criminal act or omission of any of **your** directors, executives, officer, **employees** or partners but the insurance by this **policy** excludes any indemnity to **your employee**, partner, director committing or colluding in committing the dishonest act, fraud, malicious or illegal act or omission.

2.3.4 Infringement of Intellectual Property Rights

We will indemnify **you** against all sums which **you** shall become legally liable to pay as a result of any **claim** against **you** during the **period of insurance** alleging unintentional infringement of **intellectual property rights**.

2.3.5 Irrecoverable fees

If a third party is refusing to pay for an amount claimed by **you** and the basis of their refusal is likely give rise to a claim you under this **policy** for an amount greater than the amount in dispute, **we** may, at **our** discretion pay the disputed amount in order to mitigate any such claim against **you**.

Any payment made in this regard will form part of the **limit of indemnity** should the third party continue with their claim. However, should the disputed amount be ultimately recovered, **you** must return the amount **we** originally paid to **us**.

2.3.6 Libel and slander

We will indemnify **you** against any **claim** first made against **you** during the **period of insurance** consequent upon any unintentional libel or slander or alleged libel or slander which is unintentional in connection with **your profession**.

2.3.7 Negligence

We will indemnify **you** against all sums which **you** shall become legally liable to pay as a result of any **claim** against **you** during the **period of insurance** for any negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation.

2.3.8 Product disparagement and breach of advertising regulations

We will indemnify **you** against all sums which **you** shall become legally liable to pay as a result of any **claim** against **you** during the **period of insurance** alleging product disparagement or breach of any comparative advertising regulations.

2.3.9 Rectification costs

- a) If during the **period of insurance** **you**, but not **your** client, become aware of anything covered above which is capable of being successfully rectified without leading to a **claim** against **you**, **we** will pay the additional expenses directly incurred with **our** prior consent in rectifying the problem. **We** will only do this if **we** agree that these expenses are less than the amount of a potential **claim** covered by this insurance which would have arisen if the problem was not rectified.
- b) **We** accept that **you** are sometimes unable to obtain **our** approval due to time constraints or because the problem occurs out of **our** office hours and **we** cannot

give **our** consent due to lack of sufficiently detailed information. Therefore, if **you** can satisfy **us** that **your** client has received the same level and quality of service or deliverables that they were originally entitled to, and **you** have spent the minimum necessary to achieve this and these expenses were less than the amount of a potential **claim** covered by this insurance, **you** will pay these reasonable expenses provided **you** have informed **us** of the problem within ten (10) working days of the problem occurring and subsequently give **us** the information and documentation we require to support the expenses and actions taken.

- c) **Our** liability to indemnify under this clause 2.3.10 shall not exceed the sub-limit of **indemnity** of GBP50,000 which amount is inclusive of **defence costs** and is the maximum payable any one claim and in the aggregate during the **period of insurance**.

2.4 Professional liability limitations and exclusions

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

2.4.1 Aircraft, watercraft, vehicles or buildings

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

- a) the ownership, possession or use by **you** or on **your** behalf of any aircraft, watercraft or mechanically propelled vehicle,
- b) the ownership or possession by **you** or on **your** behalf of any buildings, structures, premises, land or property (mobile or immobile) or that part of any building leased, occupied or rented by **you**.

2.4.2 Asbestos

any **claim**, alleged **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

2.4.3 Associated company

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

- a) any **insured** or any **parent of the insured** or any **subsidiary**; or
- b) any firm, partnership or entity in which **you** or any of **your** directors or partners has a financial or executive interest;

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

2.4.4 Assumed duty or obligation

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly 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 profession**.

2.4.5 Bodily injury

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

- a) to or of any **employee** whilst in the course of their employment for or on **your** behalf; and
- b) to any person not being an **employee** unless arising directly as a result of a breach of professional duty by the insured in the conduct of **your business**.

2.4.6 **Client acceptance**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of any final copy, artwork or layout for any project which has not been agreed by **your** client, whether evidenced by a manual sign-off or by way of electronic acceptance.

2.4.7 **Computer virus transmission**

any **claim**, loss, liability, expenses, costs or **defence costs** with respect to the transmission of any **computer virus** which:

- a) was knowingly created, modified or adopted by **you** or by any person who has gained access to **your** information and communications equipment systems;
- b) indiscriminately replicates itself and is automatically disseminated on a global or national scale, or to an identifiable class or sector of users.

2.4.8 **Consequential Loss**

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) any trading loss or trading liability including those arising from the loss of any client, account or business

2.4.9 **Contractual liability**

any **claim**, loss, liability, expenses, costs or **defence costs**, other than as provided under clause 2.3.3, arising directly or indirectly from any liability assumed by **you** under any express warranty, guarantee or other agreement unless such liability would have attached to **you** in the absence of such express warranty, guarantee or other agreement.

2.4.10 **Date recognition compliant**

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or attributable to, or in any way involving the failure of technology to be **date recognition compliant**.

2.4.11 **Deliberate or reckless acts of defamation**

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

2.4.12 **Existing claims**

- a) any **claim**, loss, liability, expenses, costs or **defence costs** made, threatened or intimated against **you** prior to the **period of insurance**;
- b) any **claim**, loss, liability, expenses, costs 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.

2.4.13 **Excess**

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

2.4.14 **Finance**

any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the provision of finance.

2.4.15 **Financial services**

any **claim**, loss, liability, expenses, costs 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.

2.4.16 **Punitive, multiple or exemplary damages**

any punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal.

2.4.17 **Game promotion, contest or lottery**

any **claim**, loss, liability, expense, costs or **defence costs** arising directly or indirectly out of the outcome of any game promotion, contest or lottery.

2.4.18 **Health, lifestyle or relationship deterioration**

any **claims**, loss, liability, expense, costs or **defence costs** arising directly or indirectly out of anything shown or described in any advertising, educational or promotional material which results in any adverse change in a claimants health, lifestyle or relationship with others.

2.4.19 **Insured's insolvency**

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

2.4.20 **Legislation and regulation**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.

2.4.21 **Liability arising out of employment**

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

2.4.22 **Limit of indemnity**

any **claims**, loss, liability, expenses, or costs **in excess** of the **limit of indemnity** stated in the **schedule**.

2.4.23 **Management liability**

any **claims**, loss, liability, expenses, costs or **defence costs** caused by or arising from any personal liability incurred by any of **your** directors or officers when acting in that capacity or managing **your business**, or their breach of any fiduciary duty, other than when performing a **business** activity for a client, or any statement, representation or information concerning **you** and **your business** contained in any accounts, reports or financial statements.

2.4.24 **Mimicking**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of the mimicking in any way by anyone or anything shown in or described in any advertising, educational or promotional material.

2.4.25 **Negotiable paper**

any **claim**, loss, liability, expenses, costs 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.

2.4.26 **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.

2.4.27 **Obscenity, blasphemy or pornographic material**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from any obscenity, blasphemy or pornographic material.

2.4.28 **Other insurance**

any **claim**, loss, liability, expenses, costs 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.

2.4.29 **Patent**

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

2.4.30 **Pension, benefit, trust fund management**

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

2.4.31 **Pollution**

any **claims**, loss, liability, expenses, costs 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.

2.4.32 **Products liability**

any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving goods or products sold, supplied, repaired, altered, treated, manufactured, installed or maintained by **you** or by any consultant, sub-contractor or agent of **yours** but this exclusion will not apply to breach of duty in the sale or supply of any product if:

- a) it is sold or supplied by **you** in conduct of the **business**; and
- b) **you** have undertaken all reasonable steps which are contemporaneously and fully documented, to ensure that the product:
 - i) complies with all relevant health and safety regulations and standards in the United Kingdom or wherever **you** supply to;
 - ii) is sold or supplied with any instructions which are necessary for its safe use;
 - iii) is fit and proper for its purpose; and

- c) the product was acquired by **you** from a manufacturer or sourcing agent that **you** know to be reputable, reliable and solvent and with whom **you** have a written contract including a written indemnity from the manufacturer or sourcing agent against loss which arises from the product; and
- d) **you** have effected public and products liability insurance being generally available in the London insurance market for indemnity against products liability.

2.4.33 **Product recall**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of, or in any way involving the withdrawal, inspection, repair, modification or replacement of any product or of any property of which such product form a part, if such product or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

2.4.34 **Property damage**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of, or in any way involving **property damage** and or **damage to documents / data** unless arising directly as a result of a breach of professional duty by **you** in the conduct of the **business**.

2.4.35 **Retroactive date**

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

2.4.36 **Single copy material**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from the loss, damage or destruction of any original single-copy film, negative, prints, sound tapes, video tapes, visual images or sounds.

2.4.37 **Stunts**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from any stunt or other activity during the making or production of any advertising, educational or promotional material.

2.4.38 **Take-over or merger**

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly by reason of acts, errors or omissions committed by **you** after the date of any **take-over or merger** unless otherwise agreed by the **us**.

2.4.39 **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.

2.5 Other professional liability terms and conditions

Not applicable to this **section**.

2.6 Conditions precedent for professional liability

2.6.1 Protection of Computer Systems

It is agreed as a condition precedent to **our** liability under this insurance that **you** shall take reasonable measures to maintain and upgrade software which protects against any unauthorised use or access to **your** computer systems or internet website, and to take regular back-up copies of any data, file or programme.

3 Section B – Legal expenses

3.1 Legal expenses cover

- 3.1.1 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) the **date of occurrence** of the **insured incident** happens during the **period of insurance** and within the **territorial limit**; and
 - b) any legal proceedings will be dealt with by a court, or other body which **we** agree to, in the **territorial limit**; and
 - c) in civil claims it is always more likely than not that a **person insured** will recover damages (or obtain any other legal remedy which **we** have agreed to) or make a successful defence.
- 3.1.2 For all **insured incidents**, **we** will help in appealing or defending an appeal as long as the **person insured** tells **us** within the time limits allowed that they want **us** to appeal. Before **we** pay any **costs and expenses** for appeals, **we** must agree that it is always more likely than not that the appeal will be successful.
- 3.1.3 If a **representative** is used, **we** will pay the **costs and expenses** incurred for this.
- 3.1.4 **We** will pay compensation awards that **we** have agreed to.
- 3.1.5 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**.

3.2 Employment disputes and compensation awards

3.2.1 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 with
 - i) an **employee** or ex-**employee** or a trade union acting on behalf of an **employee** or ex-**employee** which arises out of, or relates to, a contract of employment with **you**; or
 - ii) an **employee**, prospective **employee** or ex-**employee** arising from an alleged breach of their statutory rights under employment legislation.

3.2.2 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 3.2.1.
Provided that:
 - a) 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 as prepared by the Advisory Conciliation and Arbitration Service; or
 - ii) followed equivalent codes of business issued by the labour relations agency in Northern Ireland; or

- iii) sought and followed advice from **our** legal advice service.
- b) 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.
- c) 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.
- d) 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**.
- e) the total of the compensation awards payable by **us** shall not exceed GBP1,000,000 in any one **period of insurance**.

3.2.3 **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.

3.3 **Legal defence**

At **your** request

3.3.1 **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 enforcement officer;
 where it is alleged that the **person insured** has or may have committed a criminal offence; or
- b) following an event which leads to the **person insured** being prosecuted in a court of criminal jurisdiction; 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.

3.3.2 **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**.

3.3.3 **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 on the grounds of sex, sexual orientation, race, disability, age, religious belief or political opinion; or
- b) civil action is taken against them as a trustee of a pension fund set up for the benefit of **your employees**.

3.3.4 **We** will represent the **person insured** in appealing against the imposition or terms of any statutory notice issued under legislation affecting **your business**.

3.3.5 **We** will represent **you** in appealing against the refusal of the information commissioner to register **your** application for registration.

3.3.6 **We** will pay the **attendance expenses** of a **person insured** for jury service.

Provided that:

- a) in so far as proceedings under the Health and Safety at Work etc Act 1974 are concerned, the **territorial limit** shall be any place where the act applies.

- b) at the time of the **insured incident** you have registered with the information commissioner in respect of clause 3.3.1 c).

3.4 Statutory licence protection

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.

3.5 Property protection and bodily injury

3.5.1 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) any nuisance or trespass.

3.5.2 Bodily injury

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

3.6 Tax protection

3.6.1 Full or aspect enquiries

We will negotiate on **your** behalf in respect of a **full enquiry** and/or **aspect enquiry** and represent **you** in any subsequent appeal proceedings.

3.6.2 Employers' compliance

We will negotiate on **your** behalf and represent **you** in any appeal proceedings in respect of a dispute concerning **your** compliance with pay as you earn or social security regulations following a review by HM Revenue & Customs.

3.6.3 VAT disputes

We will negotiate on **your** behalf and represent **you** in any appeal proceedings following an assessment issued by HM Revenue & Customs in respect of value added tax due.

Provided that under clause 3.6:

- a) for all **insured incidents**, **you** have taken reasonable care to ensure that all returns are complete and correct and that such returns are submitted within the statutory time limits allowed; and
- b) **we** will not pay more than GBP2,000 for claims in respect of **aspect enquiries**.

3.7 Contract disputes (Your schedule will indicate if this is operative)

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 GBP250. If the amount in dispute exceeds GBP5,000, **you** will be responsible for the first GBP500 of **legal costs** in each and every claim.
- b) if the amount in dispute is payable in instalments, the instalments due and payable at the time of making the claim exceed GBP250.
- 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.

3.8 Specific Legal expenses limitations and exclusions

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

3.8.1 Employment disputes and compensation awards

a) Employment disputes

- i) Any employment dispute where the cause of action arises within the first ninety (90) days of the indemnity provided by this **section**.
- ii) Any dispute with an **employee** who was subject to a written or oral warning (formal or informal) within one hundred and eighty (180) days immediately preceding the inception date of the indemnity provided by this **section** if the **date of occurrence** was within the first one hundred and eighty (180) days of the indemnity 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 indemnity 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 any transfer of business which falls within the scope of 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;
 - 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;
 - V. statutory rights in relation to Sunday shop and betting work.
- 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 recommendation it has made, including non-compliance with a reinstatement or re-engagement order.

c) Service occupancy

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

3.8.2 Legal defence

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.

3.8.3 Statutory licence protection

- a) 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.

3.8.4 **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.

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) a motor vehicle owned or used by, or hired or leased to a **person insured** or their family members.

3.8.5 **Tax protection**

- a) In respect of **aspect enquiries** the first GBP200 of **costs and expenses** in each and every claim.
- b) Any **insured incident** arising from a tax avoidance scheme.
- c) Any **insured incident** caused by **your** failure to register for value added tax.
- d) Any **insured incident** arising from any investigation or enquiries undertaken by HM Revenue & Customs special investigations section or special civil investigations or the Revenue & Customs prosecution office.
- e) Any **insured incident** arising from any investigation or enquiry by HM Revenue & Customs into alleged dishonesty or alleged criminal offences.

3.8.6 **Contract disputes**

- a) Any dispute arising from an agreement entered into prior to the inception date of the indemnity provided by this **section** if the **date of occurrence** is within the first ninety (90) days of the indemnity provided by this **section**.
- b) Any claim relating to the following:
 - i) the settlement payable under an insurance policy;
 - ii) a lease, licence or tenancy of land or buildings other than a dispute with a professional adviser in connection with the drafting of a lease, licence or tenancy agreement;
 - iii) a loan, mortgage, pension 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, software, systems or services; or

- ii) 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 a **person insured**.
- f) The recovery of money and interest due from another party other than disputes where the other party intimates that a defence exists.

3.9 General legal expenses limitations and exclusions

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

- 3.9.1 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**.
- 3.9.2 **Costs and expenses** incurred before the written acceptance of a claim by **us**.
- 3.9.3 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 clause 3.2.2 Compensation awards and clause 3.3 Legal defence.
- 3.9.4 Any claim relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.
- 3.9.5 Any claim relating to franchise or agency agreement entered into by **you**.
- 3.9.6 Any **insured incident** deliberately or intentionally caused by a **person insured**.
- 3.9.7 A dispute with **us** not otherwise dealt with under clause 3.10.17.
- 3.9.8 Any claim relating to a shareholding or partnership share in the **insured** unless such shareholding was acquired under a scheme open to all employees of the **insured** or a substantial number of them of a certain minimum grade other than the directors or partners of the **insured**.
- 3.9.9 Judicial review.
- 3.9.10 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;
 - d) pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds.
- 3.9.11 Legal action a **person insured** takes which **we** or the **representative** have not agreed to or where the **person insured** does anything that hinders **us** or the **representative**.
- 3.9.12 When either at the commencement of or during the course of a claim, **you** are 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.
- 3.9.13 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

3.10 Legal expenses other terms and conditions

- 3.10.1 A **person insured** must:
- keep to the terms and conditions of this **policy**;
 - notify **us** immediately of any alteration which may materially affect **our** assessment of the risk;
 - take reasonable steps to keep any amount **we** have to pay as low as possible;
 - try to prevent anything happening that may cause a claim;
 - send everything **we** ask for, in writing;
 - give **us** full details of any claim as soon as possible and give **us** any information **we** need.
- 3.10.2 **We** can take over and conduct in the name of the **person insured**, any claim or legal proceedings at any time.
- 3.10.3 **We** can negotiate any claim on behalf of a **person insured**.
- 3.10.4 **We** will choose the **representative** to represent a **person insured** in any proceedings where **we** may be liable to pay a **compensation award**. In any other case a **person insured** is free to choose a **representative** (by sending **us** a suitably qualified person's name and address) if:
- we** agree to start legal proceedings and it becomes necessary for a lawyer to represent the interests of a **person insured** in those proceedings; or
 - there is a conflict of interest
- 3.10.5 Before a **person insured** chooses a lawyer or an accountant, **we** can appoint a **representative**.
- 3.10.6 A **representative** will be appointed by **us** and represent a **person insured** according to **our** standard terms of appointment. The **representative** must co-operate fully with **us** at all times.
- 3.10.7 **We** will have direct contact with the **representative**.
- 3.10.8 A **person insured** must co-operate fully with **us** and with the **representative** and must keep **us** up-to-date with the progress of the claim.
- 3.10.9 A **person insured** must give the **representative** any instructions that **we** require.
- 3.10.10 A **person insured** must tell **us** if anyone offers to settle a claim and must not agree to any settlement without **our** written consent.
- 3.10.11 If a **person insured** does not accept a reasonable offer to settle a claim, **we** may refuse to pay further **costs and expenses**.
- 3.10.12 **We** may decide to pay the **person insured** the amount of damages that the **person insured** is claiming or is being claimed against them instead of starting or continuing legal proceedings.
- 3.10.13 If **we** ask, a **person insured** must tell the **representative** to have **costs and expenses** taxed, assessed or audited.
- 3.10.14 A **person insured** must take every step to recover **costs and expenses** that **we** have to pay and must pay **us** any **costs and expenses** that are recovered.
- 3.10.15 If a **representative** refuses to continue acting for you with good reason or if you dismiss a **representative** without good reason, the cover **we** provide will end at once, unless **we** agree to appoint another **representative**.

- 3.10.16 If a **person insured** settles a claim or withdraws their claim without **our** agreement, or does not give suitable instructions to a **representative**, the cover **we** provide will end at once and **we** will be entitled to re-claim any **costs and expenses** paid by **us**.
- 3.10.17 If there is a disagreement about the way **we** handle a claim that is not resolved through **our** internal complaints procedure, **we** and the **person insured** can choose a suitably qualified person to arbitrate. **We** and the **person insured** must both agree to the choice of this person in writing. Failing this **we** will ask the president of a national association relevant to the arbitration to choose a suitably qualified person. All costs of resolving the matter must be paid by the party whose argument is rejected. If the decision is not clearly made against either party, the arbitrator will decide how the costs are shared.
- 3.10.18 **We** may at **our** discretion require **you** to obtain an opinion from counsel at **your** expense as to the merits of a claim or proceedings. If counsel's opinion indicates that there are reasonable grounds for the pursuit or defence of a claim or proceedings, the cost of obtaining the opinion will be paid by **us**.
- 3.10.19 **We** will not pay any claim covered under any other policy, or any claim that would have been covered by any other policy if this **policy** did not exist.
- 3.10.20 This section will be governed by English law.
- 3.10.21 All Acts of Parliament within this **section** shall include equivalent legislation in Scotland, Northern Ireland, the Isle of Man or the Channel Islands as the case may be.

3.11 Helpline services

We provide these services 24 hours a day, seven days a week during the **period of insurance**. To help **us** check and improve **our** service standards, **we** record all calls.

3.11.1 Eurolaw commercial legal advice

We will give the **insured** confidential legal advice over the phone 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.

3.11.2 Tax advice

We will give the **insured** confidential advice over the phone on any tax matters affecting the **business**, under the laws of the United Kingdom.

3.11.3 Business assistance

In the event of an unforeseen emergency affecting the **insured's** business premises which causes damage or potential danger, **we** will contact a suitable repairer or contractor and arrange assistance on behalf of the **insured**. All costs of assistance provided are the responsibility of the **insured**.

To contact the above services, phone us on 0117 9271924 quoting your policy number.

3.11.4 Counselling

We will provide all **employees** (including any members of their immediate family who permanently live with them) of the **insured** with a confidential counselling service over the phone including, where appropriate, onward referral to relevant voluntary and/or professional services.

To contact the counselling helpline, phone us on 0117 934 2121. These calls are not recorded.

We will not accept responsibility if the Helpline Services fail for reasons we cannot control. Please do not phone us to report a general insurance claim.

3.11.5 Employment manual

The DAS Employment Manual offers comprehensive, up to date guidance on rapidly changing employment law. To view it, please visit **our** 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 **us** at atemploymentmanual@das.co.uk with your email address, quoting your **policy** number and **we** will contact you by email to inform you of future updates to the information.

3.11.6 DASBusinesslaw

At www.dasbusinesslaw.co.uk you will find a wide range of letters, articles and reference information, as well as interactive document builders, designed to help you run your business.

The service also provides useful tools 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, go to www.dasbusinesslaw.co.uk and register using Password DAS472301 and your Policy Number. When prompted to input your company name, please enter 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.

Please note that if you have a specific problem or dispute, you should always contact the legal advice helpline for advice.

4 Duties in the event of a claim or potential claim

Except for clause 4.1.1 a) the due observance and fulfilment of the provisions of clause 4 is a condition precedent to our liability for any claim under this **policy**. Clause 5.15 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 4.

4.1 Claim notification

4.1.1 **You** will give notice in writing or by an agreed electronic medium, to **us** as soon as reasonable practical:

- a) of any loss, liability, costs or expenses or of any **circumstance**; or
- b) in any event within fourteen (14) days, of any **claim**;

with full particulars thereof.

4.1.2 **We** agree that any **circumstance(s)** 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**.

4.1.3 Notice to **us** must be given to the claims notification addresses specified below:

For **section A** please contact:

QBE Insurance (Europe) Limited,
Plantation Place, 30 Fenchurch Street, London, EC3M 3BD
or smepiclaims@uk.qbe.com

For **section B** please contact:

DAS Legal Expenses Insurance Company Limited
DAS House, Quay Side, Temple Back, Bristol BS1 6NH

4.2 Your duties in event of a claim

4.2.1 For each and every claim **you** and any person acting on **your** behalf must:

- a) not admit responsibility, make an offer or promise, nor offer payment or indemnity without **our** written consent;
- b) not incur any **defence costs** without **our** consent except at **your** own cost;
- c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently;
- d) give all such information, assistance and forward all documents to enable **us** to investigate, settle or resist any claim as **we** may require;
- e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;
- f) not destroy evidence or 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**.

4.3 Claim Procedure

Section A

For each and every claim **you** and any person acting on **your** behalf must:

4.3.1 prove, if it is alleged that by reason of an exclusion of **war** or an act of **terrorism** an event is not covered by this insurance, that the exclusion does not apply, it being

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

- 4.3.2 immediately send **us** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an **insured event** as soon as **you** receive it. In addition **you** must co-operate with **us** or **our** appointed agents to allow them to comply with such relevant business directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice.
- 4.3.3 authorise **us** to obtain medical records or other pertinent information upon request to do so in the event of an **insured event** involving **bodily injury**.

Section B

- 4.3.4 To make a claim under this **section** please telephone us on 0117 9271924. **We** will ask **you** about your legal dispute and if necessary call **you** back at an agreed time to give **you** legal advice. If **your** dispute needs to be dealt with as a claim under this **section**, **we** will provide **you** with a claim reference number. At this point **we** will not be able to confirm that **you** are covered but **we** will pass the information **you** have given **us** to **our** claims handling teams and explain what to do next.
- 4.3.5 If **you** would prefer to report **your** claim in writing please send it to the Claims Department,

DAS Legal Expenses Insurance Company Limited, DAS House, Quay Side, Temple Back, Bristol BS1 6NH.
- 4.3.6 Alternatively you can email your claim to **us** at newclaims@das.co.uk
- 4.3.7 Claims are usually handled by a representative appointed by **us**, but sometimes **we** deal with them ourselves. Claims outside the United Kingdom may be dealt with by other DAS offices elsewhere in Europe.
- 4.3.8 Please do not ask for help from a solicitor or accountant before **we** have agreed. If **you** do, **we** will not pay the costs involved.

4.4 Our rights

- 4.4.1 Claims will be handled and administered by **us** or such parties as **we** in **our** absolute discretion may determine.
- 4.4.2 **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 **you** upon such conditions as regards the payment of opponents' costs and with such liberty to bind **us** by compromise as **we** may in **our** absolute discretion determine.
- 4.4.3 **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 **costs and expenses** incurred prior to the date of payment.
- 4.4.4 **We** may at any time apply to **you** for reimbursement of payments made under clause 2 but which do not exceed the **excess**.

4.5 Disputed defence or appeal

If any dispute arises between **you** and **us** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Queen's Counsel to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final. In the event of conflict between any person falling within the definition of **insured** separate representation will be arranged for each party.

4.6 Subrogation

- 4.6.1 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 by **us**.
- 4.6.2 **You** will at **our** request and expense do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by **us** for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which **we** will be or would become entitled or subrogated upon by paying for or the making good of any **damage** under this section, whether such acts and things will be or become necessary or required before or after their indemnification by **us**.
- 4.6.3 In the event of any payment under this insurance, **we** will act in concert with all other interested persons (including **you**) concerned in the exercise of any rights of recovery.
- 4.6.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including **you**) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; **we** are to be reimbursed out of any balance remaining up to the amount paid hereunder; lastly, the interested persons (including **you**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 4.6.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled.

4.7 Waiver of subrogation against employees

We agree that **we** shall not exercise any subrogation rights against an **employee** of **yours** unless the claim has been brought about or contributed to by the dishonest fraudulent criminal or malicious act or omission of that **employee**.

5 General terms and conditions

5.1 Adjustment of premium

Where the premium in whole or part is provisionally based on estimates provided by **you**, **you** will keep accurate records and declare such information as **we** require within three (3) months of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to **you** as the case may be but subject to any minimum premium that may apply. **We** reserve the right to request that **you** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

5.2 Assignment

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

5.3 Cancellation

We may at any time during the **period of insurance** serve written notice on **you** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (30th) day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon **our** demand will return to **you** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy** but subject to adjustment in accordance with clause 5.1 above. Without prejudice to any other forms of service, the 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.

5.4 Claims jurisdiction

The insurance granted by **section A** extends to include any third party claims brought against **you** in accordance with the law of any country world-wide except that **we** will not be liable for any loss, liability, expenses, costs or **defence costs** in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of United States of America and Canada (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).

5.5 Confidentiality

You shall not disclose the terms, conditions, exclusions, **limit of indemnity** of this **policy** or the amount of the premium paid to any third party except to the extent that they are required by law to do so or with **our** written consent to such disclosure.

5.6 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 **insured** and both **you** or **us** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

5.7 Document management

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

5.8 Disclosure under the Data Protection Act 1998

5.8.1 **We** record and hold data in accordance with the Data Protection Act 1998 and follows strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. **We** may find it necessary to pass data

to other firms or businesses that supply products and services associated with this **policy**.

- 5.8.2 Further, by accessing and updating various databases **we** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. 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.

5.9 Dispute resolution

- 5.9.1 All matters in dispute between the parties arising out of or in connection with this insurance, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of any dispute arising under the insurance. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.

- 5.9.2 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.

- 5.9.3 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 be determined and be subject to the exclusive jurisdiction of the High Court, London.

5.10 Fraud

If the claim is in any respect fraudulent or if any fraudulent means or devices are used by **you** or anyone acting on **your** behalf to obtain any benefit under this **policy** or if any liability, loss, destruction or damage is occasioned by wilful act or with **your** connivance there will be no rights to any form of payment or indemnity under this **policy**.

Further any claim paid to **you** in respect of any fraudulent means or device must be repaid to **us**.

5.11 Inspection and audit

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

5.12 Interrelated acts

All **claims**, loss, liability, expenses, and costs resulting from:

- 5.12.1 one and the same act error or omission; or
- 5.12.2 a series of acts errors or omissions arising out of or attributable to the same originating cause, source or event; or
- 5.12.3 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.

5.13 Material alteration

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

5.13.1 **you** going into voluntary bankruptcy, receivership or liquidation or failing to pay **your** debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or

5.13.2 any material change in the nature of the **business** offered by **you**.

5.14 Minimisation of risk

5.14.1 **You** will take all reasonable steps to avoid agreeing in any contract with a client to:

- a) use more than reasonable care and skill;
- b) provide something more that reasonably fit for its intended purpose;
- c) have a greater financial responsibility for any **claim** covered by this insurance than would otherwise be the case at law;
- d) remove reasonable limits on its liability for any consequential or pure economic loss.

5.14.2 **You** will take all reasonable steps at **your** own expense to prevent an **insured event** arising or continuing. Upon the happening of an **insured event** and at all times thereafter, **you** shall act as a prudent uninsured and take all such reasonable measures as are appropriate to minimise any claims which arise or may arise from that you event.

5.15 Observance

5.15.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by **you**, and are not already described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by **us** of any provision will not prevent **us** from relying on such term or condition or condition precedent in the future.

5.15.2 Further where an indemnity is provided to another party **you** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply providing always that the other party complies with the terms of clause 4 (Duties in the event of a claim or potential claim).

5.15.3 In the event of a breach of any provision in the policy, **we** may reject or reduce claims connected with the breach providing **we** can demonstrate some prejudice, and continue the **policy** on such terms as it may determine and if any payment on account of any such claim has already been made to **you**, **you** will repay forthwith all payments on account to **us**.

5.16 Representation

Any person falling within the definition of **insured** agrees that the **business** 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 **you** of any return premium that may be payable under this **policy** will satisfy **our** obligations to return premium to the **business**.

5.17 Policy law and jurisdiction

This **policy** will be governed by and interpreted in accordance with the laws of England and subject to the exclusive jurisdiction of the High Court, London.

6 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 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**.

6.1 Aspect enquiry

Aspect enquiry means an examination by HM Revenue & Customs which considers one or more specific aspects of the **insured's** self assessment and/or corporation tax return.

6.2 Bodily injury

6.2.1 Bodily injury under **section A** means death and injury, illness or disease whether bodily or mental.

6.2.2 Bodily injury under **section B** means death or injury caused by a specific or sudden accident.

6.3 Business

6.3.1 Business shall mean the business and/or businesses named in the **schedule** and their predecessors and any other business and or businesses disclosed to **us** in the **proposal** for their performance of any **professional services** undertaken as part of the activities declared to **us**, in the discharge of a professional duty of care to a third party (other than any sub-consultant, sub-contractor or agent for whom **you** are legally liable) which has been assumed by **you** under a contract with or appointment by such third party, in the conduct of **your** business and/or business.

6.3.2 It is agreed that **we** will not deny indemnity hereunder if the business should change its name and there is no other change that materially alters the risk.

6.4 Circumstance(s)

Circumstance(s) means an incident, occurrence, dispute, fact, matter, act or omission that might give rise to a claim under this **policy**.

6.5 Claim

Claim means:

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

6.5.2 any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served on **you**;

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

6.6 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.

6.7 Costs and expenses

Costs and expenses means:

6.7.1 Legal costs

- a) All reasonable and necessary costs chargeable by the **representative** on a standard basis.
- b) 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.

6.7.2 Accountant's costs

A reasonable amount in respect of all costs reasonably incurred by the **representative**.

6.7.3 Attendance expenses

- a) 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** employer will not pay for.
- b) 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 one two hundred and fiftieth (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.

6.8 DAS

DAS means DAS Legal Expenses Insurance Company Limited.

6.9 Date of occurrence

Date of occurrence means:

- 6.9.1 for civil cases (other than under clause 3.6 Tax protection), the **date of occurrence** is when the cause of action first accrued.
- 6.9.2 for criminal cases, the **date of occurrence** is when the **person insured** commenced or is alleged to have commenced to violate the criminal law in question.
- 6.9.3 for licence or registration appeals, the **date of occurrence** is when the **insured** first became aware of the proposal by the relevant licensing or regulatory authority to suspend, alter the terms of, refuse to renew or cancel the **insured's** licence or British Standard Certificate of Registration.
- 6.9.4 for **full enquiries** or **aspect enquiries**, the **date of occurrence** is when HM Revenue & Customs first notifies in writing the intention to make enquiries.
- 6.9.5 for Employers' Compliance and Value Added Tax disputes, the **date of occurrence** is when the relevant authority sends an assessment or written decision to the **insured**.

6.10 Date recognition compliant

Date recognition compliant means that neither performance nor functionality of technology is affected by any date and in particular, but without limitation:

- 6.10.1 no value for current date will cause or give rise to any interruption in the operation;

- 6.10.2 date-based functionality must behave consistently;
- 6.10.3 in all interfaces data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules;
- 6.10.4 any leap year must be recognised as a leap year.

6.11 Defence cost(s)

Defence cost(s) means all legal costs and expenses incurred with **our** prior written and 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)**, but does not include **your** own costs and expenses.

6.12 Documents / data

Documents / data means any documents, digitised data, microcode or information stored in written, machine-readable or any other form, excluding any bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

6.13 Employee

Employee means any person including trainees and consultants acting under a contract of service with **you** in respect of **your** conduct of **business**.

6.14 Excess

The **limit of indemnity** is additional to the excess and excess means the first amount specified in the **schedule** payable by **you** in respect of each and every **claim, series of claims** or **circumstance** as ascertained after the application of all other terms and conditions of this insurance. The excess will not be applied to **defence costs** (unless expressly provided otherwise).

6.15 Full enquiry

Full enquiry means an extensive examination by HM Revenue & Customs which considers all aspects of the **insured's** tax affairs, excluding those enquiries which are limited to one or more specific aspects of the **insured's** self assessment and/or corporation tax return.

6.16 Insured incident

Insured incident means and refers to insuring clauses 3.2 - 3.7 under **section B**.

6.17 Insured/you/your

Insured/you/your means:

- 6.17.1 the **business**;
- 6.17.2 the partners and/or directors and/or members of the **business** during the **period of insurance**;
- 6.17.3 former partners and/or former directors and/or former members of the **business**;
- 6.17.4 in respect of the **professional services** undertaken on behalf of the **business** only those persons named as consultants or former consultants in the **proposal**;
- 6.17.5 any retired partner, director or member of the **business** remaining as a consultant to the **business**;
- 6.17.6 the estate, heirs and executors and/or legal/personal representatives of those parties mentioned in above in the event of their death, incapacity, insolvency or bankruptcy for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

6.18 Insurer/we/our/us

Insurer/we/our/us means:

6.18.1 for **section A**; the lead insurer is 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 and regulated by the Financial Services Authority. Registration Number 202842.

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

DAS House, Quay Side, Temple Back, Bristol BS1 6NH. tel: 0117 934 2000 fax: 0117 934 2109
Home State - United Kingdom. Authorised and regulated by the Financial Services Authority. Registration Number 202106.

6.19 Intellectual property rights

Intellectual property rights means copyright, trademark, music rights, performance rights, broadcasting rights, moral rights or any act of passing-off.

6.20 Limit of indemnity

6.20.1 Limit of indemnity means the amount specified in the **schedule** which shall be maximum amount payable by **us**:

- a) in the aggregate during any one **period of insurance** inclusive of **defence costs** for claims under the **policy** which involve any element of **bodily injury** or **property damage**;
- b) for any one claim under the **policy** which does not involve any element of **bodily injury** or **property damage**, exclusive of **defence costs** (unless expressly provided otherwise)

6.20.2 For the avoidance of doubt the limit of indemnity is the maximum payable by **us**:

- a) including defence costs for claims falling under clause 6.14.1 a) above;
- b) with **defence costs** payable in addition for claims falling under clause 6.14.1 b) above (unless expressly provided otherwise);
- c) regardless of the number of you parties, persons or organisations bringing **claims** against **you** or **series of claims** against **you**, or claims made by **you** under the **policy**.

6.20.3 Any sub-limit of indemnity stated in the **policy** is deemed to be part of and not in addition to the limit of indemnity specified in the **schedule**.

6.20.4 Further, where a limit of indemnity is stated as in the aggregate or the maximum any one **period of insurance**, that is the maximum the **insurer** will pay for all insured events during the **period of insurance**.

6.21 Parent

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

6.21.1 controls the composition of **your** board of directors; or

6.21.2 controls more than half **your** voting power; or

6.21.3 holds more than half of **your** issued share capital.

6.22 Period of insurance

Period of insurance means the period shown as such on the **schedule**, with times taken as Greenwich Mean Time unless expressly provided otherwise.

6.23 Person insured

Person insured means the **insured** and the directors, partners, managers, employees and any other individuals declared to **us** by the **insured**.

6.24 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

6.25 Pollutant

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

6.26 Pollution

Pollution means:

- 6.26.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;
- 6.26.2 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**.

6.27 Professional services

Profession(al) means the performance by **you** of professional services (including advice given) by any **insured** whilst holding an individual appointment in respect of work connected with the **business**, under the name specified by **you**, and where (if a fee was charged) the fee with respect to such services or advice is taken into account in ascertaining the income of the **business** and has been disclosed to **us**.

6.28 Property damage

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

6.29 Proposal

Proposal means any information supplied by **you** or on **your** behalf in written or electronic format, deemed to be a completed proposal form, application form, medical questionnaire including in each case attachments thereto and other relevant information that **we** may require.

6.30 Retroactive date

Retroactive date means the date (if any) stated in the **schedule**.

- 6.30.1 Unlimited retroactive cover – where no retroactive date is specified in the **schedule**, coverage under this **policy** shall be in respect of acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed or alleged to have been committed;
- 6.30.2 Limited retroactive cover – where a retroactive date is specified in the **schedule**, then coverage under this **policy** shall only be in respect of acts, errors or omissions first committed or alleged to have been first committed after the retroactive date;

6.31 Representative

Representative means the lawyer, accountant or other suitably qualified person, who has been appointed to act for a **person insured** in accordance with the terms of this policy.

6.32 Schedule

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

6.33 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**.

6.34 Series of claims

Series of claims means a number of **claims** (whether made against or involving one or more persons or entities comprising the **insured** and whether made by the same or different claimants and whether falling under one or more insuring clauses of this **policy**) that arise directly or indirectly from the same originating cause.

6.35 Source code material

Source code material means the source code and object code owned by **you** or under **your** absolute control and comprised within the technology, together with encryption keys, locks or passwords, or any other documentation relating to such software, which is or may be required for the understanding, maintaining, modifying or correcting of the software.

6.36 Subsidiary

Subsidiary means any company in respect of which **you** or the **parent** (either directly or indirectly through one or more of its subsidiary companies):

6.36.1 controls the composition of the board of directors; or

6.36.2 controls more than half the voting power; or

6.36.3 holds more than half of the issued share capital.

6.37 Take-over or merger

Take-over or merger means any sale of **the insured** named in the **schedule** or its merger with or acquisition by another entity such that **the insured** is not the surviving entity and no longer:

6.37.1 controls the composition of the board of directors; or

6.37.2 controls more than half the voting power; or

6.37.3 holds more than half of the issued share capital,

and includes, 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).

6.38 Territorial limits

6.38.1 Territorial limits under **section A** means any territory in the world.

6.38.2 Territorial limits under **section B** means:

a) For clause 3.3 Legal defence (excluding 3.3.4), and 3.5.2 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 clauses:

The United Kingdom of Great Britain and Northern Ireland, the Isle of Man, the Channel Islands and any other extension agreed with **us**.

6.39 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:

- 6.39.1 intimidate or coerce a civilian population, or
- 6.39.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- 6.39.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
- 6.39.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

6.40 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, nationalisation, requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

7 Complaints

7.1 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 the intermediary **you** should contact that intermediary in the first instance.

If **you** wish to contact **us** directly **you** should write to the complaints address shown below:

For **section A** please contact:

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

In the event **you** remain dissatisfied and where the **insurer** is or includes a Lloyd's syndicate it may be possible in certain circumstances to refer the matter to the Policyholder and Market Assistance Department at Lloyd's, One Lime Street, London EC3M 7HA; Tel: 020 7327 5693.

For **section B** 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.

7.2 About the Financial Ombudsman Service (FOS)

7.2.1 Eligible complainants are a

- a) private policyholder, or
- b) commercial policyholder or charity with a **turnover** under GBP1,000,000, or
- c) trust with assets under GBP1,000,000.

7.2.2 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 its 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**.

7.3 Financial Services Compensation Scheme

The Company 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 7th floor, Lloyds Chambers, Portsooken Street, London E1 8BN or from their website (www.fscs.org.uk).