



## **Cyber Response (SME)**

### **Cyber & Data Security Policy**

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## SECTION 1A: INSURING AGREEMENTS

Subject to the provisions of the **policy**, including any applicable **retention** or **waiting period** and any applicable **limit of indemnity/sub-limit**, we will:

### CYBER RISK LIABILITY 1.1

indemnify **you** for any **claim** and **defence costs** first made against **you** during the **policy period** which arises out of any actual or alleged **cyber risk** of which **you** first become aware during the **policy period**.

### ONLINE MEDIA LIABILITY 1.2

indemnify **you** for any **media claim** and **defence costs** first made against **you** during the **policy period** of which **you** first become aware during the **policy period**.

### CYBER BUSINESS INTERRUPTION 1.3

indemnify **you** for loss of **business income** incurred by **you** during the **period of reinstatement** directly as a result of a failure by **you** or the **service provider** to protect against a **breach of network security**.

**We** will not provide an indemnity for any losses incurred during the **waiting period** commencing when the total or partial interruption, material degradation in service, or failure of **computer systems** began.

**Our** liability will not exceed the lesser of:

- i. the amount of **business income you** would have earned during the **period of reinstatement** but for the total or partial interruption, material degradation in service, or failure of **computer systems**; or
- ii. the **limit of indemnity**

### BRICKING & DATA RESTORATION 1.4

indemnify **you** for costs and expenses incurred in:

- i. repairing, replacing or restoring electronic data; and
- ii. affected hardware;

discovered by **you** to be lost, damaged or destroyed when:

- i. the loss, damage or destruction was a result of a **breach of network security**; and
- ii. the discovery of such loss, damage or destruction occurred

during the **policy period**.

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

## CYBER EXTORTION 1.5

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

- i. **you** can demonstrate to **our** satisfaction that **you** have taken all reasonable efforts to determine that the **cyber extortion threat** is genuine and not a hoax;
- ii. if a **ransom** is demanded by a **hacker**, at least one of **your** director has agreed to the payment of the **ransom**; and
- iii. **we** have provided prior written consent to the payment of the **ransom**.

## CYBER CRIME 1.6

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

## SECTION IB : COSTS

Subject to the provisions of the **policy** including any applicable **retention** or **waiting period**, any applicable **limit of indemnity/sub-limit** and **our** prior written consent, **we** will:

## DATA BREACH LEGAL COSTS 1.7

pay on **your** behalf for an actual or suspected **cyber risk** of which **you** first become aware during the **policy period**:

- i. legal expenses incurred by a **panel adviser** to assess whether **you** are in breach of **data protection law**; and
- ii. **data breach notification costs**.

**FORENSIC COSTS** 1.8

pay forensic costs incurred by a **panel adviser** as a result of a **cyber risk** or a **cyber extortion threat** of which **you** first become aware during the **policy period** to:

- i. establish the cause and extent of the **cyber risk** or **cyber extortion threat**;
- ii. assess **your** network security and recommend security improvement; and
- iii. temporarily store **your** electronic data at a third-party host location when **your computer systems** remain vulnerable to damage, destruction, alteration, corruption, copying, stealing or misuse.

**PUBLIC RELATIONS COSTS** 1.9

pay reasonable costs **you** incur for a **panel adviser** to avert or mitigate any significant damage to any of **your** brands and business operations resulting from a **cyber risk** of which **you** first become aware during the **policy period**

**CREDIT MONITORING OR IDENTITY THEFT COSTS** 1.10

pay the costs of offering credit monitoring or identify theft services **you** incur for a maximum period of twelve (12) months to those affected by a **breach of privacy** of which **you** first become aware during the **policy period**.

**REGULATORY DEFENCE AND PENALTY COSTS** 1.11

To the extent insurable by law pay on **your** behalf those amounts which **you** are legally obliged to pay as a result of a **breach of privacy** or **breach of data protection law** of which **you** first become aware during the **policy period** for any legal and investigation costs, as a result of a civil regulatory action, **regulatory compensatory award**, civil penalty or fines imposed by a **data protection regulator** against **you**.

**PCI DDS COSTS** 1.12

pay costs **you** incur for a **claim** and **defence costs** first made against **you** by a **Payment Card Entity**, or a party to whom **you** are liable for the **claim** arising from a **breach of privacy** during the **policy period** for:

- i. a **PCI forensic consultant** to investigate any suspected or actual

- non- compliance with the **PCI DSS** if required by a **Payment Card Entity**;
- ii. the costs of **PCI DSS** recertification;
  - iii. any liability to a **Payment Card Entity** for its costs of re-issuing credit, debit or pre-funded cards due to **your** breach of **PCI DSS**;
  - iv. any costs or penalties imposed by the **Payment Card Entity** on **you**;
- to the extent insurable by law.

## SECTION 2 :EXCLUSIONS

### BETTERMENT 2.1

Costs in repairing, replacing or restoring **your computer system** to a level beyond that which existed prior to the claim or loss.

### BODILY INJURY OR PROPERTY DAMAGE 2.2

- i. **bodily injury** unless arising from any **claim** seeking compensatory damages for mental anguish or distress where such damages arise from **claims** covered under this **policy**;
- ii. physical loss, destruction or damage of tangible property (including the loss of use) unless expressly provided to the contrary.

### BREACH OF LEGISLATION/ANTI- TRUST 2.3

breach of taxation, competition, restraint of trade, anti-trust or unsolicited communications legislation or regulation including but not limited to

- i. the Employment Retirement Income Security Act 1974 and any amendment thereto, or any rules or regulations promulgated thereunder;
- ii. any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules or regulations promulgated thereunder;
- iii. any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State law or any common law relating thereto;
- iv. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
- v. the Telephone Consumer Protection Act 1991 or any subsequent amendments to that Act; or
- vi. any other law, regulation or statute relating to unsolicited communications, distributions, sending or transmitting of any communication via telephone or any other electronic or telecommunications device.

**CLAIM BY AN  
INSURED**

2.4

**claim** brought directly or indirectly by or on behalf

- i. any **insured** or **your** parent or subsidiary (as defined in the Companies Act 2006); or
- ii. any entity in which **you** or **your** partner or member has an executive interest or responsibility or has a shareholding or other financial interest representing more than 15% of the issued share capital.

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

**CONDUCT**

2.5

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

**CONTRACTUAL  
LIABILITY**

2.6

liability arising under a contract except to the extent that such liability would have attached in the absence of such contract provided that this exclusion shall not apply in respect of **PCI DSS**.

**EXISTING CLAIMS  
OR  
CIRCUMSTANCES**

2.7

Occurrence:

- i. prior to the **retroactive date**; or
- ii. notified to any other insurer(s) covering the same subject matter as this insurance for a preceding policy period.
- iii. directly or indirectly arising out of, resulting from, in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;

**FALSE ADVERTISING**

2.8

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

**FINES AND  
PENALTIES**

2.9



- i. fines, penalties, liquidated damages or contractual penalties other than those that are covered under Regulatory Defence and Penalty Costs or PCI DSS costs; or
- ii. punitive, multiple or exemplary damages awarded by a court or tribunal or reflected in a settlement.

#### GAMING, GAMBLING OR LOTTERIES 2.10

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

#### GOVERNMENT INTERVENTION 2.11

confiscation, commandeering, requisition, destruction of or damage to a **computer system** or **personally identifiable information** by a government or public authority.

#### INACCURATE PRICING 2.12

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

#### INSOLVENCY OF THE INSURED 2.13

**Insolvency event**

#### LIABILITY ARISING OUT OF EMPLOYMENT 2.14

violation relating to any individual's actual or prospective employment by **you**. This exclusion will not apply to the extent that **you** would be liable to such **employees** other than in their capacity as **employees** or a **breach of privacy** or **breach of data protection law** directly affecting **employees**.

#### MANAGEMENT LIABILITY 2.15

personal liability incurred by **you** in the role of the **director or officer** when:

- i. acting in that capacity; or
- ii. in breach of their fiduciary duty, or

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

## NATURAL PERILS 2.16

physical cause or natural peril, including but not limited to fire, storm, wind, water, flood, subsidence, or earthquake, that results in physical damage to property including to **computer systems**.

## NUCLEAR RISK AND IONISING RADIATION 2.17

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

## PATENTS/ TRADE SECRETS 2.18

the infringement of any patent or unauthorised use of trade secrets.

## PENSIONS 2.19

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

## POLLUTION ASBESTOS OR ELECTROMAGNETIC FIELDS 2.20

Claim:

- i. for **bodily injury**, sickness, disease, death or physical loss, destruction or damage of tangible property (including the loss of use) directly or indirectly caused by **pollution**;
- ii. for removing nullifying or cleaning-up seeping, polluting or contaminating substances;
- iii. directly or indirectly arising out of, resulting from, in consequence

- of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;
- iv. directly or indirectly arising out of electromagnetic fields, electromagnetic radiation or electromagnetism.

**PRODUCTS  
LIABILITY** 2.21

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

**RETURN OF FEES  
OR COMMISSIONS** 2.22

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

**SANCTION  
LIMITATION** 2.23

claim or any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **QBE** or any member of the **QBE** group of companies to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

**THEFT** 2.24

claim or loss sustained by **you** or a third party by the transfer of money or securities (or equivalent thereof) other than where coverage is provided under Section 1.6 Cyber Crime of this **policy**.

**TRADING LOSS** 2.25

- i. **your** lost profit, mark-up or tax liability or **your** equivalent; or
- ii. **your** trading loss or trading liability including those arising from the loss of any client, account or business

other than covered under Cyber Business Interruption.

**UNSUPPORTED  
SOFTWARE** 2.26

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

UTILITY SERVICE  
PROVIDER 2.27

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

WAR AND  
TERRORISM 2.28

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

## SECTION 3: NOTIFICATION AND CLAIMS

### NOTIFICATION OF A CLAIM 3.1

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

In addition, immediately upon discovery of an actual or alleged **cyber risk**, the **insured** should contact the Panel Advisers 24-hour hotline using the details set out in the **schedule**.

### YOUR DUTIES 3.2

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

- i. not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without **our** written consent;
- ii. not incur any expense without **our** written consent except at **your** own cost, unless expressly provided to the contrary;
- iii. give all such information, co-operation and assistance, and forward all documents and information as requested to enable **us** to investigate, settle or resist any claim, as **we** may reasonably require;
- iv. not destroy evidence or supporting information or documents without **our** prior written consent; nor destroy property relating to an occurrence, loss or suit that may give rise to a claim under this **policy**.

### DUTY TO DEFEND 3.3

It shall be **your** duty to defend any **claim**. **We** shall have the right and be given the opportunity to participate with **you** in the defence and settlement of any **claim** that appears likely to involve **us**.

### CLAIMING UNDER MORE THAN ONE 3.4

## SECTION

If it is possible for **you** to bring a claim under more than one **section** then **you** may elect to submit a claim against Section 1A and 1B: Insuring Agreements and Costs respectively which offers the maximum amount of payment subject to any applicable **sub-limit**.

## INTERRELATED CLAIMS 3.5

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

## FRAUDULENT CLAIMS 3.6

If **you** or anyone acting on **your** behalf makes a fraudulent claim under this **policy**, **we**:

1. are not liable to pay the claim;
2. may recover any part of the claim already paid from the relevant **insured**; and
3. may by notice to **you** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case **we** are not liable to **you** in respect of a relevant event occurring after that time and may retain any premium.

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

## SECTION 4: GENERAL CONDITIONS

### ACQUISITIONS AND CREATIONS 4.1

- i. Where **you** create or acquire during the **policy period** a company and the declared turnover relating to all such created or acquired companies does not exceed ten percent (10%) of the declared turnover of the companies covered under this **policy** at inception (less the turnover for any company which ceases to be an **insured**, by reason of sale or otherwise, during the **policy period**), then this **policy** shall include as an **insured** any such company from the date of creation or acquisition without additional premium provided that:
  - a. the **business services** carried out by such company are similar to that of **you**; and
  - b. any acquired company did not pay or reserve any **claims** in the five years prior to acquisition of a kind which would fall within the scope of cover comparable to that provided by this **policy** and the total paid or reserved amount was greater than the **retention** under this **policy**;
  - c. the **retroactive date** applicable to the **business services** of the acquired company is deemed to be the date of the acquisition;
  - d. **You**:
    - i. control the composition of the board of directors; or
    - ii. control more than half the voting power at a general meeting of shareholders; or
    - iii. hold more than half of the issued share capital (regardless of class of share); and
  - e. such company is not, and does not own or control, an incorporated entity in the USA.
- ii. Where **you** create or acquire a company subsequent to inception of this **policy** and the turnover relating to all such created or acquired company exceeds ten percent (10%) of the declared turnover of the companies covered under this **policy** at inception (less the declared turnover for any company which ceases to be an **insured** by reason of sale or otherwise, during the **policy period**), then this **policy** shall include as an **insured** any such company from the date of creation or acquisition provided that:
  - a. the terms applicable to acquisitions and creations in paragraphs 4.1(i) above also apply to such companies;
  - b. **you** notify **us** as soon as is reasonably practicable of the

creation or acquisition;

- c. **you** accept the revised premium and terms applying to each and every such creation or acquisition; and
- d. all insurance in respect of such creation or acquisition will terminate thirty (30) days following creation or acquisition if terms cannot be agreed between **you** and **us**.

#### ASSIGNMENT 4.2

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

#### CANCELLATION 4.3

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

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



**CONFIDENTIALITY 4.4**

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

- i. any director, officer, employee, agent, reinsurer or adviser of **QBE** or its group companies in connection with this **policy**;
- ii. any person in order to comply with any legal or regulatory requirement; and
- iii. as required by any court, mediator or arbitrator.

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

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

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

**CONTRACTS  
(RIGHTS OF THIRD  
PARTIES) ACT 1999 4.5**

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

**DISPUTED DEFENCE 4.6  
OR APPEAL**

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

**DUTY OF FAIR  
PRESENTATION 4.7**

**You** must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this **policy**.

**GOVERNING LAW  
AND ARBITRATION****4.8**

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

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

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

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

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

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

Unless the parties otherwise agree the arbitration tribunal shall consist of persons (including those who have retired) with not less than ten (10) years' experience of insurance or reinsurance as persons engaged in the industry

itself or as lawyers or other professional advisers.

INSPECTION AND AUDIT	4.9	<b>QBE</b> , or such representative as <b>QBE</b> may designate, will be permitted to inspect <b>your</b> property and operations during normal working hours given reasonable notice.
LATE PAYMENT OF CLAIMS	4.10	<b>We</b> shall, pursuant to section 13A of the Insurance Act 2015, pay any sum due in respect of a valid claim within a reasonable time (which includes a reasonable time to investigate and assess the claim).
LIMIT OF INDEMNITY AND RETENTION	4.11	<p>The amount specified as such in the <b>schedule</b> shall be <b>our</b> maximum aggregate <b>limit of indemnity</b> under this <b>policy</b>.</p> <p>For the purposes of this clause, any and all liability of <b>QBE</b> under this <b>policy</b> associated with a loss or <b>claim</b>, whether <b>defence costs</b>, costs and expenses or any other sums whatsoever shall be treated as part of the loss or <b>claim</b>.</p> <ul style="list-style-type: none"><li>i. <b>Our</b> liability shall not exceed any applicable <b>limit of indemnity, sub-limit</b>;</li><li>ii. where a <b>limit of indemnity</b> or <b>sub-limit</b> is stated in the <b>schedule</b> to be in the aggregate, that is the maximum <b>we</b> will pay for any and all cover whatsoever to which that limit applies in any one <b>policy period</b>;</li><li>iii. any <b>sub-limit</b> for a specified cover identified in the <b>schedule</b> applies as the <b>limit of indemnity</b> for that cover and is deemed to be part of and not in addition to the applicable <b>limit of indemnity</b> unless expressly stated otherwise;</li><li>iv. any additional cover, extension or endorsement is deemed to be part of and not in addition to the applicable <b>limit of indemnity</b> unless expressly stated otherwise;</li><li>v. the <b>limit of indemnity</b> and any <b>sub-limit</b>, as applicable, is additional to the <b>retention</b>;</li><li>vi. the <b>limit of indemnity</b> and any <b>sub-limit</b> is inclusive of any cover for <b>defence costs</b> unless expressly stated otherwise;</li><li>vii. if applicable, an extended reporting period does not reinstate or otherwise affect the <b>limit of indemnity</b>.</li></ul>

**You** shall pay the **retention** or reimburse **us** to the extent that **we** have paid up to a maximum of the **retention**.

#### OTHER INSURANCE 4.12

Any payment under this **policy** shall be specifically in excess of and shall not contribute to or with any other insurance, including any insurance that would have been valid and collectable in the absence of this **policy**. The provisions of this **policy** shall not be affected or amended by the terms of any other insurance.

#### REMEDIES FOR BREACH OF THE DUTY OF FAIR PRESENTATION - PROPOSING FOR THIS INSURANCE 4.13

If **you** or anyone acting on **your** behalf breaches **your** duty of fair presentation then **our** remedies shall be as follows:

- i. if such breach is deliberate or reckless, then **we** may:
  - a. treat this **policy** as having been terminated from its inception; and
  - b. retain the premium;
- ii. if such breach is not deliberate or reckless and **we** would not have entered into this **policy** but for the breach, **we** may by notice to **you** treat this **policy** as having been terminated from its inception in which case **we** shall return the premium; and
- iii. in all other cases if, but for the said breach, **we** would have entered into this **policy** but:
  - a. on different terms (other than terms relating to the premium), **we** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
  - b. would have charged a higher premium, **we** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, **we** shall pay X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charge/higher premium}) \times 100$ .

#### REMEDIES FOR THE BREACH OF THE DUTY OF FAIR PRESENTATION - VARIATION 4.14

If **you** or anyone acting on **your** behalf breaches **your** duty of fair presentation in relation to a variation of this **policy**, **our** remedies shall be as follows:

- i. if such breach is deliberate or reckless, **we** may:
  - a. by notice to **you** treat this **policy** as having been terminated from the time when the variation was concluded; and
  - b. retain the premium;
- ii. if such breach is not deliberate or reckless, and **we** would not have entered into the variation but for the breach, **we** may treat this **policy** as if the variation was never made, in which case **we** shall return any additional premium relating to the variation; and
- iii. in all other cases if, but for the said breach, **we** would have entered into the variation but:
  - a. on different terms (other than terms relating to the premium), **we** may require that the variation is treated as if it had been entered into on those different terms;
  - b. would have increased the premium by more than it did or at all, **we** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, **we** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ ; or
  - c. would not have reduced the premium by as much as it did or at all, **we** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, **we** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/reduced total premium}) \times 100$ .

#### RISK MINIMISATION 4.15

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

#### SUBROGATION 4.16

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

Any amounts recovered will be payable as follows: any interested persons (including **you**) who have paid an amount over and above any payment under this **policy** will first be reimbursed up to the amount paid by them;

**we** are then to be reimbursed out of any balance remaining up to the amount paid under this **policy**; any residual amount is to be paid to the interested persons (including **you**) to whom cover provided by this **policy** is in excess.

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

#### SUBSCRIBING INSURER

#### 4.17

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

## SECTION 5: COMPLAINTS

### HOW YOU CAN COMPLAIN

**You** can complain about this **policy** by first contacting the broker. If **you** wish to contact **us** directly **you** can:

- a. write to Customer Relations, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD; email: CustomerRelations@uk.qbe.com, telephone **020 7105 5988**.

### THE UK FINANCIAL OMBUDSMAN SERVICE (UK FOS)

If **you** feel that its complaint has not been satisfactorily resolved, **you** may be eligible to contact the UK FOS to review the complaint.

To be an eligible complainant, **you** must be:

- a. a consumer;
- b. a micro-enterprise – a business that has an annual turnover of under EUR2million employing fewer than ten (10) employees;
- c. a small business - a business with an annual turnover below GBP6.5million and:
  - i. fewer than 50 employees; or
  - ii. an annual balance sheet below GBP5million; or
- d. a charity with an annual income of less than GBP6.5million; or
- e. a trustee of a trust with net assets of less than GBP5million; or
- f. a guarantor.

If eligible, **you** can contact the UK FOS via its website:

<http://www.financial-ombudsman.org.uk/consumer/complaints.htm>, write to the UK FOS, Exchange Tower, London E14 9SR, or telephone 0300 123 9 123 or 0800 023 4567.

Where applicable **you** must refer its complaint to the UK FOS (a) within six (6) months of **our** final response letter or (b) when **we** have failed to resolve the issue within eight (8) weeks.

The UK FOS provides impartial advice free of charge and contacting them will not affect **your** legal rights

### FINANCIAL SERVICES COMPENSATION SCHEME (FSCS)

Where **we** are QBE UK Ltd **you** may be entitled to compensation from the FSCS if **we** are unable to meet its obligations under this **policy**.

Entitlement to FSCS compensation depends on the type of business insured

and the circumstances of the claim. Further information is available from [www.fscs.org.uk](http://www.fscs.org.uk), or the insured can write to the Financial Services Compensation Scheme, PO Box 300, Mitcheldean, GL17 1DY.



## SECTION 6: PRIVACY

### PRIVACY 6

Any personal data provided to **us** will be processed in compliance with all applicable laws and regulations and in accordance with the privacy notice which can be found at <https://qbееurope.com/privacy-policy/>. Alternatively **you** may contact **our** Data Protection Officer to request a copy of the full privacy notice by email: [dpo@uk.qbe.com](mailto:dpo@uk.qbe.com) or by writing to the: Data Protection Officer, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

## SECTION 7: DEFINITIONS

### BODILY INJURY

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

### BREACH OF NETWORK SECURITY

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

### BREACH OF DATA PROTECTION LAW

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

### BREACH OF PRIVACY

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

### BUSINESS INCOME

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

1. the trend of the business, reasonable business variations, seasonal influences, prevailing economic conditions and other variations or circumstances that have an influence upon the business;
2. the increased cost of working; and
3. any costs savings which the **you** can reasonably achieve.

The calculation of **your** loss of **business income** shall be based on an

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

Requests made by **you** for indemnity by **us** shall be accompanied by a computation of the loss of **business income**. This shall set out in detail how the loss of **business income** has been calculated and what assumptions have been made.

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

- i. damaged or undamaged **computer systems**;
- ii. available stock, merchandise or data; or
- iii. substitute facilities, equipment or personnel

#### BUSINESS SERVICES

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

#### CIRCUMSTANCE

an incident, occurrence, dispute, fact, matter, act or omission that are likely to give rise to a **claim**. A circumstance notified to **us** during the **policy period** or, if applicable, the **extended reported period** shall be deemed to be a **claim**.

#### CLAIM

- i. the receipt by **you** of any written notice of demand for compensation made against the **you**;
- ii. any notice of intention in writing to commence legal proceedings against **you**.

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

#### COMPUTER SYSTEM

**your** computer and telecommunication system software and hardware, including but not limited to **your** email system, encrypted electronic signature, encrypted electronic certificate, website, intranet, network, internet- connected telephone system, program or any other data held

electronically, interconnecting wiring, fixed disks, telecommunications equipment and all components thereof used for storage, processing or communication of electronically processed data, including where provided by a **service provider**.

## CYBER EXTORTION

a threat from a **hacker** to bring about a **breach of network security** or **breach of privacy** against **your computer system**.

## CYBER RISK

- i. **breach of network security**
- ii. **breach of privacy**
- iii. **breach of data protection law**

## DATA BREACH NOTIFICATION COSTS

reasonable and necessary expenses incurred by **you** or which **you** become legally obliged to pay for the provision of notifications to comply with **data protection law** or voluntary notification if recommended by a law firm chosen by the **panel adviser** following a **breach of privacy** limited to:

- i. the legal fees incurred to identify notification communication obligations and draft notification communications;
- ii. the costs to draft, send and administer notification communications;
- iii. the costs of call centre services to respond to enquiries following a notification communication.

## DATA PROTECTION LAW

all applicable data protection and privacy legislation, regulations and guidance in any country, province, state, territory or jurisdiction which govern the use, confidentiality, security and protection of **personally identifiable information** and any guidance or codes of practice issued by any applicable **data protection regulator** or governmental entity from time to time including Regulation (EU) 2016/679 (the "**General Data Protection Regulation**" or the "**GDPR**") and Data Protection Act 2018 (or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data) and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and any guidance or codes of practice issued by any **data protection regulator** from time to time (all as

amended, updated or re-enacted from time to time).

## DATA PROTECTION REGULATOR

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

## DEFENSE COSTS

- i. costs incurred at **your** request with **our** prior consent in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;
- ii. costs and expenses incurred by **you** in pre-trial and case reviews;
- iii. the cost of attendance in court as a witness at **our** request, payable at the following rates per day on which attendance is required:
  - a. **your director or officer**, partner or member – GBP500;
  - b. any **employee** – GBP250;
  - c. any other relevant party – GBP200 (subject to **our** prior agreement); or
- iv. claimants costs recoverable from **you** arising out of a **claim** insured by this **policy**.

**Defence costs** do not include **your** own internal costs and expenses, the salary or expenses of **your employee, director or officer**, partner or member or any adjuster's fees.

## DIRECTOR OR OFFICER

any natural person who is, was or during the **policy period** becomes **your** director or officer (as determined by the applicable law of the jurisdiction in which **you** are domiciled) including the functional equivalents such as members of the executive or supervisory board of directors.

## EMPLOYEE

any person including trainees and freelance consultants acting under a contract of service with **you** in respect of the conduct of **business services** by **you**. **Employee** does not include **your** principal, shareholder, partner, director or member in their capacity as such.

## HACKER

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

## INSOLVENCY EVENT

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

## INSURED/YOU/ YOUR

- i. the company or other organisation shown as insured in the schedule including any subsidiary or any company created or acquired by you as set out in the Acquisition and Creations clause of the General Conditions section until such time as they may be sold or otherwise disposed of (but not excluding any liabilities incurred prior to disposal), and
- ii. your partners and/or directors or officers members or employees during the policy period or thereafter;
- iii. your former partners and/or former directors and/or former members and/or former employees;
- iv. the estate, heirs and executors and/or legal personal representatives of those parties mentioned above in the event of their death, incapacity, insolvency or bankruptcy for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

#### LIMIT OF INDEMNITY/ SUB-LIMIT

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

#### MEDIA CLAIM

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

#### MEDIA CONTENT

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

#### PANEL ADVISER

a claims service provider as identified in the **schedule**.

#### PAYMENT CARD ENTITY

American Express, Discover, JCB, Mastercard, Visa or any entity that is the subject of a duty to enforce the obligations of the **insured** in respect of **PCI DSS**.

**PCI DSS**

Payment Card Industry Data Security Standard.

**PCI FORENSIC  
CONSULTANT**

a forensic consultant who is approved by PCI Security Standards Council.

**PERIOD OF  
REINSTATEMENT**

the period after the waiting period commencing on the total or partial interruption, degradation in service, or failure of computer systems, and ending on either:

- i. the date on which the business income loss ends (or could have been, had you acted reasonably expeditiously to restore the business), up to a maximum of 30 days after from the time when we are satisfied that computer systems are repaired, restored and/or replaced (or could have been) to the same equivalent standard, condition, functionality, level of service and/or with the same content, or as near as reasonably possible as immediately before the total or partial interruption, material degradation in service, or failure of computer systems began; or
  - ii. one hundred and twenty (120) days;
- whichever is sooner.

**PERSONALLY  
IDENTIFIABLE  
INFORMATION**

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

**POLICY**

this document, its **schedule** and any endorsements amending either or both which together set out this insurance.

**POLICY PERIOD**

the period as specified in the **schedule**.



**POLLUTION**

discharge, seepage, migration, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, dust, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.

**PROPOSAL**

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

**INSURER/WE/US/  
OUR**

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

**RANSOM**

**your** money, products, goods, services or property.

**REGULATORY  
COMPENSATORY  
AWARD**

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

**RETENTION**

the amount as specified in the **schedule**.

**RETROACTIVE DATE**

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

**SCHEDULE**

the schedule to this **policy**.

## SECTION

a section of this **policy**.

## SERVICE PROVIDER

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

## SUBSIDIARY

any entity during any time in which you, directly or through one or more subsidiary(ies):

- i. owns more than fifty percent (50%) of the issued and outstanding share capital,
- ii. controls more than fifty percent (50%) of the voting rights, or
- iii. controls the right to vote for the election or removal of such entity's directors.

Any such entity shall only be covered by this policy for that part of the policy period when it was a subsidiary.

## TERROSISM

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:

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

## WAITING PERIOD

the period as specified in the **schedule**.

**Endorsement Number: 1.**

**Attaching to and forming part of Policy Number:**

**This Endorsement has effect from:**

**INSURED/COMPANY:**

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**QBE Participation Endorsement**

It is hereby understood and agreed that the participation of this **policy** is amended to read as follows:

69% QBE UK Limited

31% QBE Casualty Syndicate 386

All other terms, Conditions, limitations, Exclusions and Endorsements of this **policy** remain unchanged.