

# Real Estate Owners' Insurance Policy



**QBE**

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# 1 Our agreement in general

## 1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. DAS is the **insurer** of the DAS Legal Expenses **insured section**. 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 typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

## 1.3 Policy structure

- 1.3.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.
- 1.3.2 Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.
- 1.3.3 The following general terms apply to all **insured sections**, clauses and endorsements:
  - a) Duties in event of a claim or potential claim;
  - b) General terms and conditions;
  - c) General definitions and interpretation; and
  - d) Complaints.

## 1.4 Policy period and premium

- 1.4.1 The **policy** will provide insurance as described herein for the **period of insurance** provided the premium(s) and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.
- 1.4.2 The premium is deemed paid and accepted on receipt by the **insurer** or the broker appointed to place this insurance with the **insurer**.
- 1.4.3 If any premium (including a premium instalment) is not paid and accepted by the **insurer** on or before its payment date shown in the **schedule** the **insurer** can give written notice to the **insured** at its address shown on the **schedule**, cancelling the **policy** with effect from the seventh (7<sup>th</sup>) day after the notice has been served. 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 (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

## 2 Insured section – Property

### 2.1 Property cover

The **insurer** will indemnify the **insured** in accordance with the Basis of Settlement clause for accidental **damage** to the **property insured** provided that:

- a) **damage** occurs during the **period of insurance** and arises from an **insured peril**;
- b) the **property insured** is located at the **premises** within the **territorial limits**;
- c) the liability of the **insurer** under this **insured section** will not exceed the **sum(s) insured** or any applicable **sub-limit**;
- d) unless expressly stated to the contrary cover granted by extension clauses to this Insured section-Property do not increase the **sums insured**. Any **sub-limits** stated form part of and are not additional to the **sums insured**.

#### 2.1.2 Architects', surveyors', consulting engineers' and other fees

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for an amount for legal and other fees of architects, surveyors and consulting engineers, for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in the **reinstatement** of loss in the event of **damage** by any **insured peril** except that the **insurer** will not be liable for such fees incurred in preparing any claim made under this **policy**.

Provided that no liability will be incurred by the **insurer** for such fees unless the **insured** has obtained the **insurer's** prior written consent to the appointment of such architects, surveyors and consulting engineers and the fees incurred.

#### 2.1.3 Arson, theft and criminal acts reward costs

In the event of **damage** that is insured by this **insured section** the **insurer** will, subject to its prior consent (such consent will not be unreasonably withheld), indemnify the **insured** for reasonable expenses that the **insured** incurs in paying rewards for information leading to a successful conviction or for information where the police believe that such information will secure a conviction following **damage** except that the **insurer's** liability for such expenses will not exceed the **sub-limit** shown in the **schedule** in respect of this clause.

#### 2.1.4 Bailors' Goods

This **insured section** is extended to cover the **insured** for **damage** to bailors' goods for which the **insured** is responsible in connection with the **business** provided that:

- a) the **insurers** will only indemnify the **insured** in respect of **damage** where:
  - i) the goods are stored in a secure building anywhere within the **territorial limits**; and
  - ii) an inventory signed by the **insured** has been issued to the tenant as soon as the bailors' goods are taken into the **insured's** custody; and
  - iii) the bailors' goods are inspected at least every seven (7) days;
- b) this insurance excludes and does not cover:
  - i) theft or attempted theft not involving entry into or exit from the **building**, where the bailors' goods are being stored, by forcible and violent means;
  - ii) payment under the **reinstatement** conditions herein;
  - iii) **damage** in respect of:
    - I) audio and visual equipment;
    - II) cigarettes, cigars, tobacco, wines and spirits;
  - iv) any payment by the terms of this clause in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.5 Buildings in course of construction or alteration

As regards works carried out at the **premises** which are subject to clause 22(c) of the Joint Contracts Tribunal (JCT) or any similar conditions, all parties named in the contract shall be

deemed to be joint insureds under this insurance, and the indemnity provided by this **insured section** extends to include:

- a) materials in connection with such work from the time they are delivered to the site at the **premises**;
- b) existing building or structure at the **premises** specified in the contract as affected by the works;

but only to the extent and for the **insured perils** for which the **insured** has accepted responsibility under such contract, provided always that the **insurer's** liability under this clause shall not exceed the **sub-limit** shown in the **schedule**.

#### 2.1.6 Capital additions

This **insured section** is extended to provide indemnity to the **insured** in respect of **damage** to:

- a) alterations, additions, extensions and/or improvements to the **buildings** insured (but not appreciation in value thereof);
- b) newly acquired and/or newly erected **buildings** provided they are not otherwise insured anywhere within the **territorial limits**;

provided that:

- a) the **insurer's** liability under this clause will be in addition to the **sums insured** and the **insurer's** total liability under this capital additions clause will not exceed the **sub-limit(s)** for this clause as shown in the **schedule**;
- b) such property is not otherwise insured;
- c) the **insured** undertakes to give particulars of such property as soon as possible and in any event every six (6) months and to retrospectively insure the newly acquired property to the date of the commencement of the **insurer's** liability; and
- d) the **insurers** shall be entitled to charge an appropriate additional premium pro rata from the date of alterations, additions, extensions and/or improvements or acquisition of the newly acquired property and may vary the terms of this **policy**.

#### 2.1.7 Computer control systems –incompatibility of equipment or records

In the event of **damage** that is covered by this **insured section** the **insurer** will indemnify the **insured** for the costs of:

- a) modification of the **computer control systems**; or
- b) replacement of **computer records** together with **reinstatement** of programs and/or information thereon, whichever is the lesser amount to achieve compatibility in the event that the loss of **computer control systems** has resulted in undamaged **computer records** being incompatible with the replacement **computer control systems**;

arising out of the incompatibility of **computer records**, provided that:

- i) the replacement **computer control systems** is the nearest equivalent to that lost or **damaged**; and
- ii) the **insurer's** liability shall not exceed the **sub-limit** shown in the **schedule** for any one (1) **period of insurance**.

#### 2.1.8 Debris removal

In the event of **damage** that is insured by this **insured section** the **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for the costs necessarily incurred by the **insured** in:

- a) removing debris from the damaged property site and the area within two hundred and fifty metres (250m) of the perimeter of the damaged property site;
- b) cleaning or clearing the drains, the sewers and/or the gutters of the damaged property site and the area within two hundred and fifty metres (250m) of the perimeter of the damaged property site;

- c) removing extraneous materials from machinery, plant and/or equipment, whether or not such machinery, plant and/or equipment has been **damaged**;
- d) removing the debris of property not belonging to the **insured** as a result of the **damage** subject to the **sub-limit** in respect of Debris removal- Tenants' property shown in the schedule;
- e) dismantling and/or demolishing of, or shoring up, propping and/or fencing the portion(s) of the **property insured** that has been damaged by an **insured peril**.

Except that the **insurer** will not be liable for any cost and expenses:

- i) arising from pollution or contamination of property not insured by this **policy**;
- ii) of temporary boarding up of windows as part of a claim for breakage of glass if this insurance includes glass **damage**;

and provided that if at the time of **damage** any **buildings** are awaiting demolition, the **insurer's** maximum liability in respect of such property shall not exceed the additional costs of removing debris which are incurred by the **insured** solely as a result of **damage**.

#### 2.1.9 **Discharge of gas flooding systems**

The insurance provided by this **insured section** - property is extended to include the cost of recharging gas cylinders installed solely for the protection of the **property insured** following accidental discharge. The **insurers** shall not be liable for discharge arising:

- a) during repairs or alterations to the building in which the cylinders are situated;
- b) during installation, repair, removal, alteration, extension or testing of all or part of the gas flooding system;
- c) during the operation of the gas flooding system with the intention of preventing or extinguishing fire.

Subject to the maximum liability of the **insurers** not exceeding the **sub-limit** stated in the schedule.

#### 2.1.10 **Documents removal**

If the **schedule** states that **contents** are insured by this **insured section**, the **insurer** will indemnify the **insured** for the costs and expenses of reinstating **documents** to the extent possible, in the event that **documents** are **damaged** while temporarily removed away from the **premises**, or in transit by road, rail or inland waterway, except that the **insurer** will not be liable for:

- a) **damage** that occurs during temporary removal or transit outside the European Union;
- b) **damage** that is recoverable under any other insurance or in any other way;
- c) **damage** caused by theft or attempted theft, but this exclusion will not apply where the theft or attempted theft takes place from a building or a motor vehicle and the theft or attempt theft meets the following conditions:
  - i) if the theft or attempted theft takes place from a building, the theft or attempted theft must involve entry to or exit from the building by violent and forcible means or must arise from robbery or attempted robbery; or
  - ii) if the theft or attempted theft takes place from a motor vehicle belonging to or under the control of the **insured**, the vehicle must be:
    - I) occupied by the **insured** or **employee** of the **insured**; or
    - II) if unattended, all doors, windows and other means of entry must be closed and locked and all keys must be removed to a place of safety; and
    - III) if left unattended between the hours of 9pm and 6am, parked in a securely locked building or garage or in a security compound that is permanently manned and protected by a controlled security barrier or the vehicle must be fitted with an immobiliser approved by the **insurer** and brought into operation;
- d) for any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.11 European Union and public authorities

In respect of **buildings** and **contents**, the **insurer** will pay the additional cost of **reinstatement** of the damaged **property insured** as may be incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any act of Parliament or with bye-laws of any municipal or local authority or European Union directive, provided that:

- a) the amount recoverable under this clause will not include the cost incurred in complying with any such regulations, bye-laws or directive:
  - i) in respect of **damage** occurring prior to inception of this **policy**;
  - ii) in respect of **damage** not insured by this **insured section**; or
  - iii) under which notice has been served upon the **insured** prior to the happening of the **damage**;
- b) the amount recoverable under this clause will not include the additional cost that would have been required to make good the property **damaged** to a condition equal to its condition when new had the necessity to comply with any of the aforesaid regulations, bye-laws or directives not arisen;
- c) the amount recoverable under this clause will not include the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the **property insured** or by the owner thereof by reason of compliance with any of the aforesaid regulations, bye-laws or directives;
- d) if the liability of the **insurer** in respect of any item of **property insured** apart from this clause is reduced by the application of any of the terms and conditions of this **policy** or this clause, then the liability of the **insurer** under this clause in respect of any such **property insured** will be reduced in like proportion;
- e) the **insurer** will have no liability under this clause unless the work of **reinstatement** is commenced and carried out with reasonable dispatch (which may be carried out upon another site and in any manner suitable to the requirements of the **insured** subject to the liability of the **insurer** not being thereby increased);
- f) the total amount recoverable under this clause in respect of undamaged portions of **property insured** other than foundations, will not exceed twenty per cent (20%) of the total amount for which the **insurer** would have been liable had the **building**, or **contents** item been totally destroyed;
- g) the indemnity provided by this clause shall be included within and not be in addition to the **sums insured** under each item of **property insured** shown in the **schedule**.

#### 2.1.12 Eviction of squatters

The **insurer** will, subject to its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for reasonable expenses that the **insured** incurs in paying the legal costs and expenses payable to a lawyer or other suitably qualified person who has been appointed to act for the **insured** in any civil action to evict anyone in the **insured's premises** who does not have the **insured's** permission to be there. All legal proceedings will be subject to the law and jurisdiction of a court or other acceptable dispute resolution body, situate within the **territorial limits**.

Except that the **insurer** will not pay costs and expenses:

- a) for any dispute where the cause of the action arises within 90 (ninety) days of the inception date of this policy;
- b) for any dispute where the cause of the action involves the **insured's** tenant;
- c) for any dispute which is recoverable under the **insured section** Property owners' liability or the **insured section** – DAS Legal Expenses sections to this **policy** or otherwise more specifically insured elsewhere;
- d) in excess of the **sub-limit** shown in the **schedule** which shall be the **insurer's** maximum liability during any one **period of Insurance**.

#### 2.1.13 Failure of third party insurances

This **insured section** extends to include **buildings** at the **premises** defined below for the amount of such **damage** to such **buildings** but only to the extent that the lessee or freeholder is unable to recover such an amount equivalent to that which could be payable under this **policy** if the lessee or freeholder were the **insured** as a result of:

- a) the lessee or freeholder having failed to arrange or maintain insurance to comply with the terms of the lease;
- b) the lessee or freeholder having failed to insure for an adequate amount whether the amount insured had been approved by the **insured** or not;

but excluding any payments:

- i) in respect of **damage** that the **insured** recovers from any other party;
- ii) arising from the operation of any **excess** or **deductible** under any more specific insurance;
- iii) where the lessee or freeholder's policy fails due to the breach of any condition or warranty contained within the lessee or freeholder's policy as a result of the action of the **insured**;
- iv) arising from the failure of the lessee or freeholder to make or pursue a legitimate insurance claim;
- v) arising from the failure of the **insured** to carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- vi) unless the **insurer** is the sole provider of loss of rent insurance in respect of all of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

Provided that the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**.

#### Premises

For the purpose of this clause **premises** shall mean all properties of the **insured** anywhere in the **territorial limits** which are leased to or by them but not specifically insured or referred to elsewhere under this **policy** and where the lessee or freeholder is responsible for arranging insurance under the terms of a lease with the **insured**.

#### 2.1.14 Fire extinguishment expenses and emergency services damage

In the event of **damage** that is insured by this **insured section**, the **insurer** will cover the **insured** for:

- a) extinguishment expenses necessarily incurred by the **insured** in order to minimise **damage**;
- b) expenses incurred in recharging or repairing **damage** to any gas or sprinkler fire extinguishment system;
- c) **damage** to lawns, gardens, playing surfaces and landscaped areas, car parks, private roads and pathways at the premises caused by emergency service vehicles while attending an incident involving **damage** for which the **insurer** has accepted a claim under this **insured section**;
- d) fire brigade charges;
- e) costs and expenses reasonably incurred by the **insured** to upgrade or improve any gas or sprinkler fire extinguishment rendered necessary to comply with any regulations introduced after the installation of the original system following an incident involving **damage** for which the **insurer** has accepted a claim under this **insured section**.

Except that the **insurer's** liability shall not exceed the **sub-limit** shown in the **schedule** in respect of this clause.

#### 2.1.15 Fly tipping

The insurance by this **insured section** extends to include the reasonable costs of clearing and removing any property illegally deposited in or around the **premises** provided that the **insurer's** maximum liability shall not exceed the **sub-limit** shown in the **schedule**.

#### 2.1.16 Frustrated Legal Costs

The insurance by this **insured section** extends to include the **insured's** legal costs and expenses for the prospective sale of any **property insured** and the amount payable shall be such sums as the **insured** shall be legally liable to pay and shall pay solely as a consequence of the cancellation of the sale as a result of **damage**, provided that the liability of the **insurer** in respect of the cover granted by this clause shall not exceed the **sub-limit** shown in the **schedule** during the **period of insurance**.

#### 2.1.17 Gardening equipment

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for **damage** to gardening equipment, owned by the **insured** and used in connection with the **business** at the **premises** provided that the liability of the **insurer** in respect of this clause shall not exceed the **sub-limit** shown in the **schedule**.

#### 2.1.18 Inadvertent omission to insure

The insurance by this **insured section** extends to include **buildings** anywhere in the **territorial limits** whereby the **insured** has an obligation to insure whether the **buildings** are owned by or on lease to them or in which they are interested as mortgagees but which have inadvertently been left uninsured provided always that:

- a) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** total liability for such amount payable under this clause will not exceed the **sub-limit** as shown in the **schedule**;
- b) the **insured** will give notice in writing to the **insurer** immediately they become aware of an omission to insure and will pay the appropriate premium from the date upon which the insurance of the property became the **insured's** responsibility;
- c) the **insured** will carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- d) the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

#### 2.1.19 Insect nests removal

The insurance by this **insured section** extends to include costs incurred by the **insured** as a result of removing the nests of wasps, bees or hornets and other insects harmful to humans from the **premises**. The **insurer** will not pay:

- a) the costs of removing such nests that were already in the **building** prior to the inception of this **policy**;
- b) any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.20 Insurance premiums

In the event of **damage** that is covered by this **insured section** the **insurer** will pay the cost of any insurance premiums, or in respect of inherent defects policies, any technical agents' fees, necessarily and reasonably incurred by the **insured** in arranging contract works policies with the **insurer** or in continuing with any pre-existing inherent defects policies. The liability of the **insurer** under this clause shall not exceed the **sub-limit** shown in the **schedule** during the **period of insurance**.

#### 2.1.21 Landscaped gardens

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for **damage** (including accidental **damage** by employees) to landscaping and gardens, plants, trees and/or ornamental features, provided that:

- a) the **insurer's** liability under this clause shall not exceed the **sub-limit** shown in the **schedule** any one claim and in the aggregate in any one **period of insurance**;
- b) the **insurer** will not be liable for:
  - i) the cost of moving soil other than as necessary for surface preparation;
  - ii) the failure of trees, shrubs, plants or turf to become established following replanting or relaying;
  - iii) the failure of seeds to germinate;
  - iv) damage caused by disease, infection or application of chemicals.

#### 2.1.22 **Local authority rates**

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for money paid or payable by the **insured** to the local authority in respect of local authority or business charges levied in respect of the **premises** that the **insured** becomes liable for as a result of the lessee being able to determine or frustrate the lease following **damage** except that this insurance excludes and the **insurer** will not be liable:

- a) in respect of any portion or portions of the **premises** which were untenanted at the date of the **damage**;
- b) where the **insured** elects not to reinstate the **premises**;
- c) where the **premises** are unfit for occupation as a result of an act or omission by the **insured** or someone acting on their behalf, which has resulted in a valuation officer reinstating the **premises** on the rating list;
- d) for any amount in excess of the **sub-limit** shown in the **schedule** which is the **insurer's** maximum liability under this clause.

#### 2.1.23 **Lock replacement**

The insurance by this **insured section** extends to indemnify the **insured** for the reasonable cost of replacing external locks or safe or strong room locks at the **premises** following theft of keys from the **premises**, the **insured person's** home, or following a hold-up while the keys are in the **insured's** personal custody or that of any authorised employee, except that the **insurer** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.24 **Metered water, gas, oil or electricity**

The **insurer** will indemnify the **insured** for any charges for which the **insured** is legally responsible and unable to recover from any other party, in respect of loss of metered water, gas, oil or electricity provided that:

- a) loss of water, gas, oil or electricity is due to **damage** at the **premises** which is covered under this **insured section**;
- b) the lost water, gas, oil or electricity is measured by the utility meter;
- c) the **insured** maintains a record of readings from the utility meter at intervals of not more than ninety (90) days;
- d) the **insurer's** liability in respect of any one (1) insured **premises** is limited to such excess water or gas charges demanded by the utility undertaking in consequence of **damage** and will not exceed the **sub-limit** shown in the **schedule**;
- e) the insurance by this extension clause shall not apply to **unoccupied** buildings.

#### 2.1.25 **Privity of contract**

This **insured section** extends to include all such sums as the **insured** will become legally liable to pay and will pay as indemnity to any tenant in respect of the repair or **reinstatement** of premises previously owned but which are no longer the property of the **insured** and where the current owner has failed to maintain adequate insurance cover provided that:

- a) the **insurer's** liability will not exceed the **sub-limit** shown in the **schedule**;
- b) the insurance by this clause will not contribute in respect of any more particular insurance effected by the new owner, tenants or sub-tenants;

- c) the **insured** will take all reasonable and appropriate steps to obtain release from their liabilities under the covenants to insure such property on its disposal;
- d) this clause will only be effective if the **insurer** is the sole provider of **buildings** insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

#### 2.1.26 **Reinstatement to match**

The insurance by this **insured section** extends to include the cost of replacement or modification of undamaged parts of the **buildings** that form part of a suite, common design or function where the **damage** is restricted to a clearly identifiable area or to a specific part. Provided always that the **insurer's** liability will in no case exceed the **sub-limit** shown in the **schedule** or the amount that would have been payable had the suite, common design or function been wholly destroyed, whichever is the lesser.

#### 2.1.27 **Rent for residential buildings**

In the event of **damage** to any **premises** occupied totally or partially for residential purposes that renders them unfit to live in or access to them is denied, the **insurers** will indemnify the **insured** in respect of any:

- a) loss of rent receivable; and
- b) expenditure necessarily and reasonably incurred in the provision of comparable accommodation for the benefit of any lessee to comply with the requirements of the lease;

until the **premises** are fit again for habitation or for a period of thirty six (36) months from the date of **damage** whichever is the shorter, including the costs of:

- i) temporary storage of residents' furniture;
- ii) kennelling or boarding domestic pets if they are not allowed in the alternative accommodation.

The **insurers'** liability under this clause shall not exceed twenty percent (20%) of the **sum insured** applicable to the residential portion of the **building**.

#### 2.1.28 **Temporary protection and expediting expenses**

In the event of **damage** that is insured by this **insured section** the **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for the reasonable and necessary costs incurred to:

- a) temporarily protect or preserve **property insured**, including the provision of temporary buildings, in order to avoid or prevent immediately impending **damage** covered under this **policy**; and
- b) expedite permanent or temporary repairs to or replacement of **property insured** following **damage** covered under this **policy**.

Temporary protection and expediting expenses excludes and does not cover:

- i) expense payable elsewhere in the **policy**; or
- ii) the cost of permanent repair or replacement;

The liability of the **insurer** under this clause and the **policy** shall not exceed the **sub-limits** shown in the **schedule**.

#### 2.1.29 **Temporary removal**

The insurance by this **insured section** extends to indemnify the **insured** for **damage** to **property insured** whilst temporarily removed to any location within the **territorial limits** for storage, cleaning, renovation, repair or similar purpose. The **insurer** will not be liable for:

- a) **damage** that is recoverable under any other insurance or in any other way;
- b) **damage** caused by theft or attempted theft, but this exclusion will not apply where the theft or attempted theft takes place from a building and the theft or attempted theft involves entry to or exit from the building by violent and forcible means or arises from robbery or attempted robbery;
- c) property of others held by the **insured** in trust;

- d) any **property insured** at exhibitions or trade fairs;
- e) **damage to documents**;
- f) **damage** that occurs when the **property insured** being temporarily removed is in transit;
- g) for any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.30 **Trace and access**

In the event of **damage** that is insured by this **insured section** the **insurer** will cover the costs necessarily and reasonably incurred in locating the source of any escape of water or fuel oil from any fixed services or heating installation, including the repair to walls, floors or ceilings necessary as a direct result of the location work, except that the **insurer** will not be liable:

- a) for the cost of repairs to any fixed services or heating installation; or
- b) for any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.31 **Tree felling or lopping**

The **insurer** will indemnify the **insured** for costs and expenses necessarily and reasonably incurred in felling, lopping and removing trees for which the **insured** is legally responsible and which are an immediate threat to the safety of life or property. Provided always that the **insurers** will not be liable for:

- a) legal or local authority costs involved in removing trees;
- b) costs incurred solely to comply with a Preservation Order;
- c) costs incurred in respect of routine maintenance;
- d) any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.32 **Tree removal**

The **insurer** will indemnify the **insured** for costs and expenses necessarily and reasonably incurred in removing fallen trees and branches from the **premises** resulting from **damage** insured hereby. Provided always that the **insurers** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

#### 2.1.33 **Unauthorised use of electricity gas or water**

The **insurer** will indemnify the **insured** for the cost of metered electricity, gas or water for which the **insured** are legally responsible arising from its unauthorised use by persons taking possession of or occupying **premises** without the authority of the **insured** provided that:

- i) the **insured** takes all reasonable steps to terminate such unauthorised use as soon as it is discovered; and
- ii) the **insurer** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule** any one occurrence.

#### 2.1.34 **Undamaged tenants' improvements**

Where a lease is terminated as a direct result of **damage**, this **policy** is extended to include the cost of reimbursing the **insured's** tenants for their undamaged improvements which are no longer available to such tenants, provided that the **insurer** shall not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

## 2.2 **Property limitations and exclusions**

In addition to the limitations and exclusions applicable to this **insured section** under Exclusions to **insured sections** – Property, Loss of rent receivable, Failure of building services & Terrorism, the following are excluded from and not covered by the insurance under this **insured section**:

### 2.2.1 **Consequential loss**

any form of indirect or consequential loss except as specifically included with this **insured section**;

### 2.2.2 Excluded property

- a) **Damage** to or in connection with the following property unless specified to the contrary in the **schedule**:
- i) livestock, bloodstock, fishstock, growing crops or trees;
  - ii) watercraft or aircraft or other aerial or spatial devices or missiles or satellites;
  - iii) motor vehicles or their contents, accessories, caravans or trailers except for such property that is not licensed for road use;
  - iv) **money**, bullion, foreign coins counterfeit or substitute **money**;
  - v) land, piers, jetties, bridges, culverts or excavations;
  - vi) property in the course of erection or installation;
  - vii) property in transit;
  - viii) property owned by the **insured's** tenants, or property of others held in trust by or in the care custody or control of the **insured's** tenants,
  - ix) explosives;
  - x) sculptures, other than mass produced sculptures that form part of a landscaping design;
- b) moveable property (including gardening equipment) in the open, gates or fences, unless the **damage** is caused by fire, lightning, aircraft, explosion, earthquake, riot, civil commotion, malicious persons or impact;
- c) electricity, gas, water or telecommunications transmission lines or pipes except that this exclusion shall not apply to such property for which the **insured** is responsible that is located on, under, or over the **insured's premises**.

### 2.2.3 Property insured elsewhere

**damage** to, or costs and expenses in respect of any **property insured** which is otherwise more specifically insured by or on behalf of the **insured** or the **insured's** tenants except to the extent provided by the Failure of third party insurances clause.

### 2.2.4 Valuables and Business Records

**damage** of or to jewellery, clocks, watches, precious stones, bullion, furs or curiosities, precious metals, works of art or rare books, tobacco and tobacco products, alcohol, music players, video equipment, audio, video or computer disks (whether blank or encoded with content) cameras, computer games equipment, televisions, or **documents**, manuscripts, computer systems records, **electronic data** or business books.

## 2.3 Other property terms and conditions

### 2.3.1 Buildings awaiting demolition

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that, if at the time of **damage** any **buildings** are awaiting demolition, the maximum liability of the **insurer** shall not exceed the additional costs of removing debris, in accordance with the Debris removal clause, which are incurred by the **insured** solely as a result of **damage**.

### 2.3.2 Basis of settlement

In the event of **damage** to **property insured** under this **insured section** the basis of reinstatement shall be as follows:

- a) On **employees'**, directors' or visitors' property, the cost of repairing or replacing the item(s) as new, whichever is the lesser;
- b) on landscaped gardens the cost of seeding or replacement plantings, plus the labour incurred in restoration;
- c) On all other **property insured**:
  - i) where the **property insured** is destroyed, the rebuilding of the property if a building, or, in the case of other property, its replacement by similar property, in either case in a condition equal to but not better or more extensive than its condition when new;

- ii) where the **property insured** is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

### 2.3.3 Basis of settlement conditions

- a) If the **insured** elects and the **insurer** agrees not to repair or reinstate any **property insured**, then the **insurer's** liability shall be limited to the **actual value** of the **damaged property insured**, however settlement on this basis shall be at the sole discretion of the **insurer**.
- b) If the **insurer** elects or becomes bound to reinstate or replace any **property insured**, the **insured** will, at its own expense, produce and give to the **insurer** all such plans, documents, books and information as the **insurer** may require.
- c) The **insurer** will not be bound to reinstate exactly or completely but only as circumstances permit, and in a reasonably sufficient manner, and will not in any case be bound to expend in respect of any item of the **property insured** more than the **sum insured** or **sub-limit** thereon.
- d) If at the time of any **damage** to any **property insured**, such property is covered by any other insurance effected by or on behalf of the **insured** but is not on the identical basis of **reinstatement** to the terms of this clause, then this **policy** excludes and does not cover payment of any amount in excess of the amount that would have been payable if this condition had not been incorporated.
- e) The work of **reinstatement** must be commenced and carried out with reasonable despatch, otherwise no payment will be made beyond the amount which would have been payable under this **insured section** if this condition had not been incorporated.
- f) The **insurer** will have no liability to pay any amount beyond the amount that would have been payable under this **insured section** if this condition had not been incorporated until such time as the cost of **reinstatement** has actually been incurred.

### 2.3.4 Buildings awaiting renovation, redevelopment or refurbishment

It is hereby understood and agreed that, if at the time of **damage** any **buildings** are awaiting renovation, redevelopment or refurbishment, the **insurer** shall not be liable for any costs, which would have been incurred by the **insured** in the absence of such **damage**.

### 2.3.5 Day one (1) basis – non adjustable

- a) For each item of **property insured** specified as 'Day one (1) operative' in the **schedule**, the **insurer** agrees to calculate the premium upon the **declared value** provided that, at inception of this **policy** and the commencement of each subsequent **period of insurance**, the **insured** notifies the **insurer** of the **declared value** of each such item (in the absence of such a notification, the last amount declared by the **insured** will be taken as the **declared value** for the ensuing **period of insurance**).
- b) Where by reason of any provision of the 'Basis of settlement conditions' no payment is to be made beyond the amount that would have been payable if those conditions had not been incorporated, the rights and liabilities of the **insured** in respect of the **damage** shall be subject to the terms, conditions, limitations and exclusions of this **policy** (including the applicable underinsurance provision) as if this condition had not been incorporated, except that the **sum insured** shall be limited to one hundred and five percent (105%) of the pertinent **declared value** stated in the **schedule**.

### 2.3.6 Under-insurance

Each item of **property insured** covered is, to the extent specified in the **schedule** as being covered on a **sum insured** basis, subject to the following conditions of average:

- a) Eighty five percent (85%) average

If at the time of **reinstatement** the sum representing eighty five per cent (85%) of the cost that would have been incurred in **reinstatement**, if the whole of the item of **property insured** had been destroyed, exceeds the **sum insured** thereon at the commencement of any **damage** to such **property insured** by any **insured peril**, then the **insured** will be considered as being its own insurer for the difference between the **sum insured** and the

sum representing the cost of reinstatement of the whole of the **property insured** and will bear a rateable proportion of the loss accordingly;

b) Day one (1) basis average

Where **property insured** is specified as insured on a day one (1) basis then if at the time of loss the **declared value** of the **property insured** is less than the cost of **reinstatement** at inception of the **period of insurance**, then the **insurer's** liability for any loss hereby insured will be limited to that proportion thereof which the **declared value** bears to the cost of **reinstatement**;

c) Standard underinsurance condition

For **property insured** that has the **actual value** applied, then each item of property is covered on a **sum insured** basis and is declared to be separately subject to the of average, that is if at the commencement of any **damage** by any **insured peril**, the value of **property insured** is collectively of greater value than the **sum insured**, then the **insured** will be considered as being its own insurer for the difference and will bear a rateable proportion of the loss accordingly.

2.3.7 **Claim discharge**

The **insured's** or the **insured's** personal representatives' receipt of the final adjusted claim settlement will discharge the **insurer**.

2.3.8 **Contracting purchaser**

If at the time of **damage** to any **building** insured under this **insured section** the **insured** has contracted to sell its interest in such **building** and the purchase has not been but is thereafter completed, the purchaser will be entitled (on completion of the purchase, and then only so far as the property is not otherwise insured by or on behalf of the purchaser against such **damage**) to the benefit of this **insured section** insofar as it relates to such **damage**, without prejudice to the rights and liabilities of the **insured** or the **insurer** under this **insured section** up to the date of completion.

2.3.9 **Designation**

For the purpose of determining where necessary the heading under which any property is insured, it is agreed to accept the designation under which such property has been entered in the **insured's** books.

2.3.10 **Involuntary betterment**

Where **property insured** is **damaged** and requires replacement and similar property is not obtainable, the **insurer** agrees:

- a) to accept, without deduction for betterment, replacement property which is as similar as possible and which is capable of performing the same function; and
- b) to pay the cost of purchasing and installing technologically current equipment which is necessitated by incompatibility between:
  - i) the equipment installed to replace damaged equipment; and
  - ii) undamaged existing equipment at the same or interdependent location.

The **insurer** shall not be liable to pay more than the amount sufficient to enable the **insured** to resume operations in substantially the same manner as before the **damage**.

2.3.11 **Loss of market value**

It is understood that:

- a) if the **insured** elects not to repair or rebuild the **buildings**, the **insurer** will pay to the **insured** the reduction in the market value of the **buildings** immediately following the **damage** but not exceeding the amount which would have been payable had the **buildings** been repaired or rebuilt; or
- b) if as a result of **damage** insured hereby the **insured** are required to rebuild or reinstate the **buildings** in a manner different from that immediately before the **damage** solely to comply with the European union and public authorities clause and as a result there is reduction in market value thereof the **insurer** agrees to pay:
  - i) the cost of repairing or reinstating the **buildings**; and

ii) a cash settlement representing the reduction in market value;  
provided that the total payment made:

- i) is no greater than the amount that would have been payable had the **buildings** been repaired or reinstated in an identical manner to their condition immediately before the **damage**, and;
- iii) does not exceed the **sum insured** under any individual item under this **insured section**.

#### 2.3.12 **Mortgagees and lessors**

It is agreed that any increase in the risk of **damage** resulting from any act or neglect of any mortgagor, leaseholder, lessee or occupier of any **buildings** insured by this **policy** will not prejudice the interest of any mortgagee, freeholder or lessor provided such increase in risk is without their prior knowledge or authority and that the **insurers** are notified immediately they become aware of such increase in risk and pay an appropriate additional premium if required.

#### 2.3.13 **Non-invalidity**

If the risk of **damage** is increased by any inadvertent act or omission or by any alteration not otherwise subject to any policy exclusion that occurs without the **insured's** knowledge, such material change will not invalidate this insurance, provided that the **insured** immediately on such act, omission or alteration coming to its knowledge, gives notice thereof to the **insurer** and pays such extra premium as the **insurer** may require.

However, this provision shall not apply to set aside any exclusion which would but for this clause be applicable and it is agreed that any such **policy** exclusion shall prevail over this clause in the event of any conflict.

#### 2.3.14 **Other parties**

The interest of such other parties including, as the case may be, lessors, mortgagees, banks and hire purchase companies is noted in this insurance but only to the extent of their financial interest in the **property insured**.

In the event of any claim, the:

- a) **insured** will immediately declare to the **insurer** the names of such interested parties; and
- b) **insurer** will consult with such declared interested parties as regards the manner and method of any indemnity so as to protect the direct financial interests of such parties.

#### 2.3.15 **Reinstatement of sum insured following loss**

In consideration of this insurance not being reduced by the amount of any loss under this **Insured section** - Property, the **insured** will pay such additional premium to the **insurer** as may be required.

#### 2.3.16 **Seventy two (72) hours clause**

The word occurrence shall mean any one (1) loss or series of losses arising out of and directly occasioned by one (1) event or one (1) original cause. However, the duration and extent of any one (1) occurrence shall be limited to seventy-two (72) consecutive hours as regards earthquake, flood, or windstorm.

The **insured** may choose when any of the periods commence and if the event or common cause is of greater duration than the above periods, the **insured** may decide to divide that event or common cause into two (2) or more occurrences provided that no two (2) periods overlap.

Should any such period extend beyond the expiry or cancellation date, the **insurer** shall be liable as if such period had fallen entirely within the **period of insurance** of the **policy**.

#### 2.3.17 **Subrogation waiver**

In the event of a claim arising under this **insured section**, the **insurer** agrees to waive any rights, remedies or relief to which it might become entitled by **subrogation** against:

- a) any company standing in the relation of parent to subsidiary (or subsidiary to parent) to the **insured** as defined in the Companies Act 2006 or Companies (N.I.) Order 2006, as appropriate, current at the time of the loss; and
- b) any company that is a subsidiary of a parent company of which the **insured** is itself a subsidiary, in each case within the meaning of the Companies Act 2006 or Companies (N.I.) Order 2006, as appropriate, current at the time of the loss;
- c) any tenant of the **premises** provided that:
  - i) the **damage** did not result from a criminal, fraudulent or malicious act of the tenant;
  - ii) the tenant contributes to the cost of insuring the **property insured** against the event which caused **damage** but excluding **damage** arising out of the tenant's or lessee's gross negligence.

#### 2.3.18 **Unoccupied or vacant buildings**

- a) The **insured** will give notice to the **insurer** forthwith if a **building** becomes **unoccupied** and if an **unoccupied building** or portion thereof is again occupied. The **insurer** shall have the right to impose additional conditions, exclusions and charge a suitable additional premium as the **insurer** may require in consideration for the continuance in force of this insurance.
- b) Further it is agreed as a condition of this insurance in respect of **buildings** that become **unoccupied** that:
  - i) the mains supply services are switched off and the water system is drained other than:
    - I) the circuit(s) of the electricity supply which is/are needed to maintain any fire detection system, closed circuit television system or intruder alarm system in operation;
    - II) mains services which are needed to maintain any sprinkler systems in full working order and in these circumstances heating must be maintained in the **building** at a minimum temperature of five (5) degrees centigrade;
  - ii) the **premises** are inspected thoroughly both internally and externally at least once every fourteen (14) consecutive days, unless otherwise notified in writing by the **insurers**, by the **insured**, employees of the **insured** or the authorised representatives of the **insured** and:
    - I) a record is maintained of such inspections;
    - II) all defects in maintenance and security are rectified immediately;
    - III) accumulations of combustible materials, such as all loose combustible items, including furniture, pallets, waste, refuse, junk mail, flyers and gas bottles, in and around the **premises** are removed during inspection;
  - iii) all external doors are locked securely and all windows are closed and secured;
  - iv) all letter boxes are sealed to prevent insertion of any materials or liquids;
  - v) the perimeter fences, walls and gates are maintained in good repair;
  - vi) there is no refurbishment, renovation or alteration work carried out unless agreed by the **insurers**;

throughout the **period of insurance** unless otherwise agreed by the **insurers**.

- c) Notwithstanding compliance with the terms of sub clause a) and b) above, the insurance in respect of the **unoccupied buildings** remains subject to the Exclusions to **insured section** – Property, Loss of rent receivable, Failure of building services and Terrorism and specifically to the exclusion of Disused, unoccupied or vacant buildings contained in therein.

#### 2.3.19 **VAT clause – United Kingdom only**

In respect of **property insured** in the **United Kingdom**, this **policy** is extended to include the cost of **VAT** paid by the **insured** (including self supply value added tax where appropriate) which is not subsequently recoverable following **damage** to the **property insured** provided that:

- a) the **insured's** liability for such tax arose solely as a result of the **reinstatement** and/or repair of the **property insured** following **damage**;
- b) the **insurer** has paid and or has agreed to pay for such **damage**;
- c) if any payment made by the **insurer** in respect of the **reinstatement** and/or repair of such **damage** shall be less than the actual cost of the **reinstatement** and/or repair, any payment under this clause resulting from the **damage** shall be reduced in like proportion;
- d) the **insured's** liability for such tax does not arise from the replacement premises having greater floor area than and/or being better and/or more extensive than the **damaged premises**;
- e) where an option to reinstate on another site is exercised, the **insurer's** liability shall not exceed the amount of tax that would have been payable had the **premises** been rebuilt on its original site;
- f) the **insurer's** liability shall not include amounts payable by the **insured** as penalties and/or interest for non-payment and/or late payment of tax; and
- g) terms to the contrary elsewhere in this **policy** are over-ridden as follows in respect of those items to which this clause applies:
  - i) for the purposes of the Basis of settlement clause and the rent clause, **reinstatement** costs and **rent** shall be exclusive of **VAT**; and
  - ii) the liability of the **insurer** may exceed the **sum insured** by an individual item on **buildings** or **rent** or in the whole the total **sum insured** where such excess is solely in respect of **VAT**.

#### 2.3.20 **Workmen**

Workmen may be employed to carry out new erections or alterations, repair, decoration, plant installation, general maintenance and the like at the **premises** without prejudice to the insurance hereby.

## 2.4 **Conditions precedent for property**

- 2.4.1 The duties imposed by the following clauses apply from the time the **insured** acquires knowledge of non-compliance and only to those areas of the **premises** that operate under the **insured's** direct control.

#### 2.4.2 **Automatic sprinkler installations**

In relation to **property insured** being protected by an automatic sprinkler installation in accordance with details declared to the **insurer** at inception of each **period of insurance**, it is agreed as a condition precedent to the **insurer's** liability under this **insured section** that the **insured** will ensure that the following work is carried out:

- a) the said installation will be maintained in full working order during the currency of this insurance;
- b) a test will be made every week for the purpose of ascertaining that the alarm is in working order and that the stop valves controlling the water supplies of the installation are fully open;
- c) if required by the **insurer**, quarterly or half yearly tests will be made for the purpose of ascertaining that each water supply is in order and the particulars of each test will be recorded;
- d) any defect whether revealed by such tests or otherwise will be remedied promptly;
- e) the **insured** will notify the **insurer** immediately should the water supplies be turned off or the sprinkler installation be rendered inoperative from any cause.

Cover provided by this **insured section** will not be invalidated by any defect in the said systems due to circumstances beyond the control of the **insured**.

#### 2.4.3 **Sprinkler leakage**

In respect of cover provided by this **insured section** in respect of **damage** caused by sprinkler leakage, it is agreed as a condition precedent to the **insurer's** liability under this **insured section** that the following additional conditions shall apply:

- a) the **insured** will at all times take reasonable steps to prevent frost and other **damage** to the automatic sprinkler installation in so far as his responsibility extends to maintaining the installation and will maintain the automatic external alarm signal in efficient working order;
- b) in the event of any discharge or leakage the **insured** will do and permit to be done all things practicable, whether by removal or otherwise, to save and protect the **property insured**;
- c) whenever it is the intention to make any changes, repairs or alterations to the installation, the **insured** will give written notice to the **insurer** and obtain its permission in writing;
- d) the **insured** will arrange for the **insurer** to have access to the **premises** at all reasonable times for the purposes of inspection and if the **insurer** notifies the **insured** of any defects in the condition of the installation, the **insurer** may at its option suspend sprinkler leakage cover until the defects have been remedied and approved by the **insurer**.

#### 2.4.4 **Hot work permit**

Hot work means work involving use of a naked flame or other heat source or oxyacetylene, electric arc or similar welding, cutting, grinding or other spark emitting equipment by any person (whether a third party contractor, an employee or other) at the **premises** (other than as an integral part of the **insured's** trade processes).

It is a condition precedent to the **insurer's** liability under this **insured section** that:

- a) a hot work permit in the form set out in Loss Prevention Recommendation RC7 published by the Fire Protection Association (FPA) or the QBE Hot Work Permit or such similar permit or documentation, is completed jointly by the person responsible for carrying out the work and the **insured's** safety officer (or nominated person) before any **hot work** commences; and
- b) the precautions and systems of work shown on the designated hot work permit are complied with at each stage of the **hot work**.

### 3 Insured section – Loss of rent receivable

#### 3.1 Loss of rent receivable cover

3.1.1 If there is **damage** to the **property insured** used by the **insured** at the **premises** during the **period of insurance** and in consequence the **business** carried on by the **insured** at the **premises** is interrupted or interfered with, then the **insurer** will indemnify the **insured** for loss of **rent receivable** resulting from such interruption or interference provided that:

- a) at the time the **damage** occurs there is in force either:
  - i) cover under the **insured section**-property and/or the **insured section**-failure of building services; or
  - ii) an insurance **policy** covering the interest of the **insured** in the property at the **premises** against such **damage** and such property is of a type and kind not excluded by this **insured section**;
- b) at the time the **damage** occurs the **insured** has claimed under the policy referred in a) above and the relevant insurer has paid such claim in full or admitted liability for such claim or would have done so but for the operation of a proviso in such insurance **policy** excluding liability for losses below a specified amount; and
- c) the liability of the **insurer** under this **insured section** shall not exceed the **sum insured(s)** for loss of **rent receivable** stated in the **schedule** or any applicable **sub limit**.

#### 3.1.2 Rent receivable

The **insurer's** liability in respect of **rent receivable** is limited to loss of **rent receivable** and additional expenditure and the amount payable under this **insured section** will be:

- a) in respect of loss of **rent receivable**: the amount by which, in consequence of the **damage**, the **rent receivable** during the **indemnity period** falls short of the **standard rent receivable**;
- b) in respect of additional expenditure: the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of **rent receivable** which but for that expenditure would have taken place during the **indemnity period** in consequence of the **damage**, but not exceeding the amount of the reduction in **rent receivable** thereby avoided;
- c) minus any sum saved during the **indemnity period** in respect of such of the expenses and charges payable out of **rent receivable** as may cease or be reduced in consequence of the **damage**;

except that if the **sum insured** in respect of **rent receivable** is less than the **annual rent receivable** (or a proportionately increased multiple thereof where the **maximum indemnity period** exceeds twelve (12) months), the **insurer's** liability will be proportionately reduced.

#### 3.1.3 Rent receivable (Capital Additions)

This **insured section** is extended to include loss of **rent receivable**, which, but for the **damage** would have been derived from:

- a) alterations, additions, extensions and/or improvements to the **buildings** insured;
- b) newly acquired and/or newly erected **buildings** provided they are not otherwise insured anywhere within the **territorial limits**;

provided that:

- i) the **insured** shall advise the **insurer**:
  - I) every six (6) months in respect of any such alterations, additions, extensions and improvements together with a forecast of the **rent receivable** derived from such alterations, additions, extensions and improvements;
  - II) as soon as practicable and in any event within six (6) months of any such newly acquired and/or newly erected property together with a forecast of the **rent receivable** derived from such newly acquired and/or newly erected property.

- ii) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit(s)** as shown in the **schedule**;
- iii) the **insured** will pay the appropriate additional premium required from inception of such additional cover and amounts so declared shall be added by endorsement to the **sum insured** by the relevant item;
- iv) at any one **premises** the cover by this clause shall not exceed the **sub-limit(s)** shown in the **schedule**;
- v) no amount shall be paid beyond the **indemnity period** shown in the **schedule**.

#### 3.1.4 Contracting purchaser

If at the time of any **damage** to the **buildings** insured by **insured section** – property the **insured** has contracted to sell their interest in the **buildings**, the purchaser will be entitled to the benefits of this **insured section** provided that:

- a) **damage** takes place during the period from exchange to completion; and
- b) the completion is finalised; and
- c) the purchaser's prospective rental income is not otherwise insured; and
- d) the amount of indemnity provided to the purchaser shall not exceed the amount that would have been paid to the **insured** had the contracted sale not been agreed.

#### 3.1.5 Cost of re-letting buildings

The **insurer** will indemnify the **insured** for costs incurred with the written consent of the **insurer** in re-letting the **buildings** including legal fees in connection with the said re-letting solely as a result of **damage** provided that the sum of the amount payable under this extension and the amount otherwise payable under this **insured section** will in no case exceed the **sum insured** or exceed the **maximum indemnity period** in respect of **rent receivable**.

#### 3.1.6 Denial of access

The **insurer** will indemnify the **insured** for loss resulting from interruption of or interference with the **business** in consequence of **damage** by an **insured peril** covered under **insured section** – property to property within two hundred and fifty metres (250m) of the **premises** which prevents or hinders the use of the **premises** or access thereto, whether the **premises** or **property insured** therein shall be **damaged** or not, except that the **insurer's** liability for such loss will not exceed the **sub-limit** shown in the **schedule**.

#### 3.1.7 Denial of access (non damage)

The **insurer** will indemnify the **insured** for loss of **rent receivable** in consequence of:

- a) action by the Police Authority following danger or disturbance within two hundred and fifty metres (250m) of the **premises** which shall prevent or hinder use of the **premises** or access thereto, unless:
  - i) such danger or disturbance arises from any cause within the control of the **insured**;
  - ii) the loss of **rent receivable** is a result of **damage** to property;
  - iii) such denial of access is the direct result of repairs or maintenance being carried out to property as a result of inherent defect, or wear and tear or general upkeep;
- b) the said **premises** containing or being thought to contain a harmful device, provided that the police are informed immediately of the presence or suspected presence of a harmful device;

provided always that the **insurer** shall not be liable in respect of loss resulting from the first number of hours specified in the **schedule** each and every such interruption or interference.

The **insurer's** liability under this clause will not exceed the **sub-limit** shown in the **schedule**.

#### 3.1.8 Failure of third party insurances

The **insurer** will indemnify the **insured** for loss of **rent receivable** at the premises (defined below) but only to the extent that the lessee or freeholder is unable to recover such an

amount equivalent to that which could be payable under this **policy** if the lessee or freeholder were the **insured** as a result of:

- a) the lessee or freeholder having failed to arrange or maintain insurance to comply with the terms of the lease;
- b) the lessee or freeholder having failed to insure for an adequate amount whether the amount insured had been approved by the **insured** or not;

but excluding any loss:

- i) or payment in respect of loss of **rent receivable** that the **insured** recovers from any other party;
- ii) or claim due to the operation of any **excess** or **deductible** under any more specific insurance;
- iii) or claim where the lessee or freeholder's policy fails due to the breach of any condition or warranty contained within the lessee or freeholder's policy as a result of the action of the **insured**;
- iv) as a result of the failure of the lessee or freeholder to make or pursue a legitimate insurance claim;
- v) or claim under this clause unless the **insured** carries out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- vi) unless the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance;
- vii) in excess of the **maximum indemnity period** stated in the **schedule**.

Provided that the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**.

#### **Premises**

For the purpose of this clause **premises** shall mean all properties of the **insured** anywhere in the **territorial limits** which are leased to or by them but not specifically insured or referred to elsewhere under this **policy** and where the lessee or freeholder is responsible for arranging insurance under the terms of a lease with the **insured**.

#### **3.1.9 Inadvertent omission to insure (rent receivable)**

The insurance by this **insured section** extends to include the loss of **rent receivable** from **buildings** anywhere in the **territorial limits** which have inadvertently been left uninsured provided always that:

- a) this clause shall only apply to **rent receivable** from **buildings** which the **insured** has an obligation to insure, irrespective of whether the **buildings** are owned by or on lease to them or in which they are interested as mortgagees;
- b) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**;
- c) the **insured** will give notice in writing to the **insurer** immediately they become aware of an omission to insure and will pay the appropriate premium from the date upon which the insurance of the property became the **insured's** responsibility;
- d) the **insured** will carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- e) the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

### 3.1.10 **Loss of attraction**

The **insurer** will indemnify the **insured** for loss of **rent receivable** resulting from interruption of or interference with the **business** in consequence of diminution of attraction to the **premises** following **damage** to property by any **insured peril** covered under **insured section** - property occurring at any other premises within a two hundred and fifty metres (250m) radius of any of the **premises**, provided that:

- a) the **insurer** shall not be liable for loss relating to the first number of hours specified in the **schedule** of each and every interruption or interference; and
- b) the **insurer's** liability under this clause in respect of any one (1) occurrence shall not exceed the **sub-limit** shown in the **schedule**.

### 3.1.11 **Loss of investment income on late payment of rent**

If as a result of **damage**, the **insurer** indemnifies the **insured** in respect of loss of **rent receivable** and the payment by the **insurer** to the **insured** is made later than the date upon which the **insured** would normally have expected to receive such **rent receivable** from a lessee, the **insurer** will pay a further sum representing the investment interest lost to the **insured** during the period of delay.

### 3.1.12 **Managing agents**

The insurance under this **insured section** extends to include interruption of or interference with the **business** in consequence of **damage** to property at the premises of any managing agents employed or engaged to collect **rent receivable**, provided that:

- a) such **rent receivable** is not received by the **insured** as a direct result of the **damage**;
- b) the **rent receivable** is not outstanding for one hundred and twenty (120) days in excess of its due date prior to the **damage** at the managing agents' premises;
- c) all reasonable steps to recover the **rent receivable** are taken;
- d) such **rent receivable** is not recoverable under any other policy;
- e) the **insurer** shall not be liable for any claim in excess of twenty percent (20%) of the **sum insured** on **rent receivable** under this **insured section**.

### 3.1.13 **Notifiable disease, murder or suicide, food or drink or poisoning**

The **insurer** will indemnify the **insured** for loss resulting from interruption of or interference with the **business** in consequence of any of the following events:

- a) any occurrence of a **notifiable disease** at the **premises** or attributable to food or drink supplied from the **premises**;
- b) any discovery of any organism at the **premises** likely to result in the occurrence of a **notifiable disease**;
- c) any occurrence of a **notifiable disease** within a radius of two hundred and fifty metres (250m) of the **premises**;
- d) the discovery of vermin or pests at the **premises** which causes restrictions on the use of the **premises** on the order or advice of the competent local authority;
- e) any accident causing defects in the drains or other sanitary arrangements at the **premises** which causes restrictions on the use of the **premises** on the order or advice of the competent local authority;
- f) any occurrence of murder or suicide at the **premises**;

provided that:

- i) the **insurer** shall not be liable for any costs incurred in cleaning, repair, replacement, recall or checking of property;
- ii) the **insurer** shall only be liable for loss arising at those **premises** which are directly subject to the incident;
- iii) the **insurer** shall not be liable for any loss arising directly or indirectly from an occurrence of legionellosis or legionnaires' disease where the **insured** has failed to comply with
  - l) their statutory obligations in respect of the control of legionellosis or legionnaires' disease;

- II) the Health and Safety Commissions Approved Code of Practice, 'The Prevention and Control of Legionellosis (including Legionnaires' Disease)' Ref ISBN-0-7176-1772-6 or any supplementary, replacement or amending Code of Practice;

- iv) the **insurer's** maximum liability under this clause in respect of any one (1) incident shall not exceed the **sub-limit** shown in the **schedule**.

#### 3.1.14 **Prevention of access by unauthorised persons**

In the event that access by tenants to **buildings** be hindered or prevented due to the **buildings** or property in the vicinity being:

- a) occupied by terrorists or persons thought to be terrorists;
- b) unlawfully occupied except in the course of a dispute between any employer and employee(s) or other group of workers;

then the **insurer** will indemnify the **insured** for loss of **rent receivable** or, if the responsibility of the **insured**, the reasonable cost of comparable alternative accommodation incurred by the **insured's** tenants provided always that:

- i) the police are immediately informed; and
- ii) the maximum amount payable in respect of any one occurrence under this clause will not exceed the **sub-limit** shown in the **schedule** in the aggregate for any one (1) **period of insurance**.

#### 3.1.15 **Supply utilities**

- a) The **insurer** will indemnify the **insured** for loss of **rent receivable** in consequence of:

- i) **damage** by an **insured peril** to property at any:

- I) generating station or sub-station of the electricity supply undertaking;
  - II) land-based premises of the gas supply undertaking or of any natural gas producer linked directly therewith;
  - III) water works or pumping station of the water supply undertaking; or
  - IV) land-based premises of the telecommunications undertaking;
- from which the **insured** obtains electricity, gas, water or telecommunication services.

- ii) accidental failure at the **premises** of:

- I) the terminal ends of the electricity supply utility service feeders;
- II) the supply of gas at the supply utility meters;
- III) the supply of water at the supply utility main stopcock; or
- IV) the supply of telecommunication services at the incoming line terminal or receivers. For the avoidance of doubt, **damage** to any satellite or interruption in the supply of any telecommunication following **damage** to any satellite is excluded from and not insured by this **policy**;

- b) The maximum amount payable in respect of any one (1) occurrence under this clause will not exceed the **sub-limit** shown in the **schedule**;

- c) The **insurer** will not be liable under this clause or elsewhere under this insurance for Loss of **rent receivable** caused by **damage** resulting from:

- i) the deliberate act of any supply utility undertaking or the exercise by any such utility undertaking of its power to withhold or restrict supply or services;
- ii) strikes or any labour or trade dispute;
- iii) drought;
- iv) any other atmospheric or weather conditions, but not excluding accidental failure due to damage to supply utility equipment caused by such conditions;
- v) for the first period of interruption or interference specified in the **schedule** as the **excess**.

## 3.2 Loss of rent receivable limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** under Exclusions to **Insured sections** Property, Loss of rent receivable, Failure of building services and Terrorism, the following are excluded from and not covered by the insurance under this **insured section**:

### 3.2.1 Limit of liability

The liability of the **insurer** under this **insured section** will not exceed the lesser of:

- a) the whole of the total **sums insured**;
- b) in respect of any item of settlement specification, its **sum insured** at the time of the **damage**;
- c) any other **limit of liability** stated in the **schedule** at the time of the **damage**;
- d) the **sum insured** (or **limit of liability**) remaining after deduction for any other interruption or interference consequent upon **damage** occurring during the same **period of insurance**, unless the **insurer** has agreed to reinstate any such **sum insured** (or **limit of liability**).

### 3.2.2 Excluded property

indemnity for loss of **rent receivable** following any interruption or interruption with the **insured's business** caused by or resulting from **damage**, to in connection with:

- a) the following property unless specified to the contrary in the **schedule**:
  - i) livestock, bloodstock, fishstock, growing crops or trees;
  - ii) watercraft or aircraft or other aerial devices or missiles or satellites;
  - iii) motor vehicles or their contents, accessories, caravans or trailers except for such property that is not licensed for road use;
  - iv) **money**, bullion, foreign coins counterfeit or substitute **money**; and
  - v) land, piers, jetties, bridges, culverts or excavations;
  - vi) property in the course of erection or installation;
  - vii) property in transit;
  - viii) explosives;
  - ix) gold, silver, jewellery, precious stones, works of art, rare books, sculptures, curios and collections;
- b) moveable property in the open, gates or fences, unless the **damage** is caused by fire, lightning, aircraft, explosion, earthquake, riot, civil commotion, malicious persons or impact;
- c) electricity, gas, water or telecommunications transmission lines or pipes except that this exclusion shall not apply to such property for which the **insured** is responsible that is located on or over the **insured's premises**.

## 3.3 Other loss of rent receivable terms and conditions

### 3.3.1 Automatic reinstatement

In consideration of the insurance hereby not being reduced by the amount of any loss under this **insured section**, the **insured** will pay such additional premium as may be required.

### 3.3.2 Basis of claims settlement

The amount payable shall be the actual amount of the reduction in **rent receivable** incurred during the **indemnity period** in consequence of the **damage**. Where under the terms of the lease or leases, rent reviews would have taken place during the **indemnity period** the basis of claims settlement shall take into account such rent reviews, provided that the **insurers'** total liability shall not exceed two hundred percent (200%) of the **sum insured** on loss of **rent receivable**.

### 3.3.3 Buildings awaiting sale

In respect of **buildings** forming part of the **property insured** by **insured section** - property that the **insured** has contracted to sell or has accepted an offer in writing to purchase the interest in subject to contract, where that sale is cancelled or delayed solely due to **damage**, the **insurer** will indemnify the **insured** in respect of:

- a) interest payable by the **insured** on capital borrowed which, but for the loss, destruction or damage, would be available, from the proceeds of the sale, for investment in the **business**;
- b) the additional interest payable by the **insured** on amounts borrowed;
- c) the investment interest lost by the **insured** on any proceeds of the sale (after the deduction of any capital borrowed as detailed in a) above);

Provided that:

- i) the insurance by this clause excludes all loss unless the **insured** has made all reasonable efforts to complete the sale as soon as possible following the **damage**;
- ii) the **insurer's** liability will not exceed the **sub-limit** specified in the **schedule**;
- iii) the **indemnity period** will not exceed the period during which the **business** is affected due to the **damage**, beginning with the date on which, but for the **damage**, the **building** would have been sold and ending with the 'date of completion' or the expiry of the **maximum indemnity period** specified in the **schedule** if earlier.

### 3.3.4 Cessation of Business

This **insured section** shall be avoided if the business is wound up or carried on by a liquidator, receiver or administrator or permanently discontinued unless continuance of cover is agreed in writing by the **insurer**.

### 3.3.5 Rent receivable premium adjustment

- a) Where **rent receivable** premium adjustment is shown as applicable in the **schedule**, the premium paid in respect of this **insured section** may be adjusted upon receipt by the **insurer** of a declaration of **rent receivable** earned during the financial year most nearly concurrent with the **period of insurance**, as reported by the **insured's** auditors. If **damage** gives rise to a loss of **rent receivable**, the above mentioned declaration shall be increased for the purpose of premium adjustment by the amount by which the **rent receivable** is reduced during financial year solely in consequence of the **damage**.
- b) If the declaration (adjusted as provided for above and proportionally increased where the **maximum indemnity period** exceeds twelve (12) months) is less than the **sum insured** for **rent receivable** shown in the **schedule** for the **period of insurance**, the **insurer** shall allow a pro-rata return premium not exceeding fifty percent (50%) of the premium paid for the cover under this **insured section**.

### 3.3.6 Payments on account

Where liability under this **policy** is admitted, the **insured** shall be entitled to receive payment(s) as agreed between the **insured** and the **insurer** in advance of final settlement provided always that:

- a) the aggregate amount of such payments shall not exceed the **sum insured** under the item for which the claim is being paid hereunder; and
- b) if the total adjusted loss under this **insured section** differs from the quantum of the payments made under this clause then the **insurer** and the **insured** mutually agree to pay or return the difference accordingly.

### 3.3.7 Subrogation waiver

In the event of a claim arising under this **insured section**, the **insurer** agrees to waive any rights, remedies or relief to which it might become entitled by **subrogation** against:

- a) any company standing in the relation of parent to subsidiary (or subsidiary to parent) to the **insured** as defined in the Companies Act 2006 or Companies (N.I.) Order 2006, as appropriate, current at the time of the loss; and

- b) any company that is a subsidiary of a parent company of which the **insured** is itself a subsidiary, in each case within the meaning of the Companies Act 2006 or Companies (N.I.) Order 2006, as appropriate, current at the time of the loss;
- c) any tenant of the **premises** provided that:
  - i) the **damage** did not result from a criminal, fraudulent or malicious act of the tenant;
  - ii) the tenant contributes to the cost of insuring the **property insured** against the event which caused **damage** but excluding **damage** arising out of the tenant's or lessee's gross negligence.

## 4 Insured section – Failure of building services

### 4.1 Failure of building services cover

The **insurer** will indemnify the **insured** for loss caused by:

- a) the **electrical or mechanical failure** of any part of **building services equipment** whilst in ordinary use causing a stoppage of normal functions ; or
  - b) the failure or fluctuation of the supply of electricity to the **building services equipment**; or
  - c) breakdown caused by the error or omission of the operator(s) during the normal operation of the **building services equipment** other than in respect of failure to maintain or wilful negligence or a malicious act; or
  - d) the fracturing of any part of the **building services equipment** by frost when such fracture renders that part of the **building services equipment** inoperative,
- provided that:
- i) such **electrical or mechanical failure** occurs during the **period of insurance**; and
  - ii) the liability of the **insurer** under this **insured section** will not exceed the **limits/sub-limits** specified in the **schedule**.

### 4.2 Failure of building services cover extensions

#### 4.2.1 Additional building services equipment

Any additional **building services equipment** owned by or leased to the **insured** of a similar class, type, function and capacity to the **building services equipment** is deemed to be included in the cover provided by this **insured section** once installation is completed and the **building services equipment** is handed over to the **insured** and is ready to commence normal working at any **premises** covered under **insured section** – property provided that:

- a) such additional **building services equipment**:
  - i) is suitable for service, free from material defects and in sound working condition;
  - ii) shall not be worked until any relevant legal requirements for inspection and certification have been fulfilled; and
  - iii) shall be insured only to the same extent as similar items of **building services equipment**;
- b) the **insured** shall advise the **insurer** as soon as practicable and in any event within six (6) months of any additional **building services equipment**;
- c) the **insured** will pay the appropriate additional premium required from inception of such additional cover and amounts so declared shall be added by endorsement to the **sum insured** by the relative item; and
- d) the liability of the **insurer** under this clause shall not exceed the **sub-limit** specified in the **schedule**.

#### 4.2.2 Damage from fragmentation

The cover provided by this **insured section** extends to apply to damage by impact to surrounding property belonging to the **insured** or for which the **insured** is responsible resulting from fragmentation of any part of the **building services equipment** other than:

- a) damage caused by:
  - i) liquid or gaseous fluid;
  - ii) fire, howsoever the fire may have been caused, and lightning;
  - iii) earthquakes;
  - iv) aircraft or missile or other aerial devices or articles dropped therefrom;
  - v) riot, civil commotion, strikers, locked out workers, labour disturbances or malicious persons;
  - vi) windstorm or flood;

- vii) escape of water from any tank, apparatus or pipe and the like;
- viii) theft or any attempted theft; or
- ix) explosion (including **pressure explosion**);
- b) damage to the **building services equipment** itself or to the contents of the **building services equipment** or to the load handled by the **building services equipment**; or
- c) breakdown resulting from lack of heat, light, power, steam, refrigeration or air conditioning;

Provided that the liability of the **insurer** under this clause shall not exceed the **sum insured** specified in the **schedule**.

#### 4.2.3 Debris removal

In the event of **electrical or mechanical failure** or **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for costs incurred with the **insurer's** prior consent, such consent not to be unreasonably withheld, in the removal of **building services equipment** consequent upon **damage** for which cover is provided by this **insured section**.

The **insurer** shall also provide indemnity for the additional costs and expenses incurred by the **insured** beyond the amount of loss sustained in repairing or replacing **building services equipment** because of contamination by a **hazardous substance**, including the clean up or disposal of such contaminated **building services equipment**. However this cover shall only apply to additional costs and expenses incurred in repairing and replacing the **building services equipment** directly affected by the **hazardous substance**, and no indemnity shall be provided for any other pollution or contamination.

Provided that the liability of the **insurer** under this clause shall not exceed the **sub-limit(s)** specified in the **schedule**.

#### 4.2.4 Loss mitigation

The insurance granted by this **insured section** is extended to indemnify the **insured** against additional expenditure necessarily and reasonably incurred by the **insured** for the sole purpose of:

- a) preventing or minimising impending **damage** that would result in the loss of functions normally carried out by or on the **building services equipment** and for which cover is provided under this clause;
- b) recompiling or restoring **data** or software or replacing third party proprietary software in direct consequence of **damage** to the **building services equipment**,

provided that:

- i) the **damage** would be reasonably expected in the absence of such measures; and
- ii) the **insurer** is satisfied that the **damage** has been avoided or reduced in consequence of the measures taken; and
- iii) this clause shall not be construed to cover any costs incurred for the regular, scheduled servicing or maintenance of the **building services equipment**; and
- iv) the **insurer's** liability under this clause does not extend beyond three (3) months **indemnity period** and shall not exceed the **sub-limit** specified in the **schedule**.

#### 4.2.5 Discharge of Gas Flooding Systems

The insurance provided by this **insured section** is extended to include the cost of recharging gas cylinders installed solely for the protection of the **building services equipment** following accidental discharge. The **insurer** shall not be liable for discharge arising:

- a) during repairs or alterations to the building in which the cylinders are situated;
- b) during installation, repair, removal, alteration, extension or testing of all or part of the gas flooding system;
- c) during the operation of the gas flooding system with the intention of preventing or extinguishing fire;

Subject to the maximum liability of the **insurer** not exceeding the **sub-limit** stated in the **schedule**.

#### 4.2.6 Replacement equipment - rental or hire costs

The insurance granted by this **insured section** is extended to indemnify the **insured** against:

- a) the cost of hiring charges incurred by the **insured** for the necessary hire of substitute **building services equipment** of a similar type and capacity until repair or replacement of the **building services equipment**; and/or
- b) the additional rental arising out of the replacement of a lease/hire agreement in respect of the **building services equipment** by a new contract for a similar equipment consequent upon damage insured by this **insured section**,

provided that:

- i) liability is admitted under this **insured section**; and
- ii) the **insurer's** liability shall not exceed the **sub-limit** specified in the **schedule**.

#### 4.2.7 Temporary repairs or expediting costs

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for the reasonable costs (if previously approved by the **insurer**) of effecting temporary repair and of expediting permanent repair of the **damage** provided that the liability of the **insurer** under this clause shall not exceed the **sub-limit** specified in the **schedule**.

#### 4.2.8 Storage tanks and contents

a) This **insured section** is extended to indemnify the **insured** for:

- i) the cost of repairing or replacing **damaged** oil or water storage tanks (other than sprinkler system tanks) and their connected pipework where such **damage** is caused by the **electrical or mechanical failure** of **building services equipment**;
- ii) the cost of replenishing the storage tanks following:
  - I) the escape of oil or water therefrom; or
  - II) contamination of the contents of such tankscaused by the **electrical or mechanical failure** of **building services equipment**;

iii) the cost of clean-up directly following the escape of oil or water therefrom

b) The insurance provided by this extension excludes and does not cover any :

- i) **damage** caused by fire howsoever the fire may have arisen;
- ii) **damage** resulting from rust, corrosion, erosion, wasting or any other gradually operating cause;
- iii) contamination of the oil or water caused by:
  - I) the natural settling, separation or accumulation of fluids or materials constituting the normal contents;
  - II) the deliberate use of fluids or materials for cleaning, flushing or other similar purposes;
- iv) **damage** to the storage tanks or connected pipework that occurred whilst the said items are in transit;
- v) indemnity for liability, costs and expenses relating to **damage** to or contamination of property not owned by the **insured**.

Provided that the **insurer's** liability under this extension shall not exceed the **sub-limit** stated in the **schedule**.

### 4.3 Failure of building services limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** under Exclusions to **insured sections** - Property, Loss of rent receivable, Failure of building services and Terrorism, the following are excluded from and not covered by the insurance under this **insured section**:

#### 4.3.1 **damage** caused by any of the **insured perils** insured under **insured section** - property;

- 4.3.2 **electrical or mechanical failure or damage** for which any manufacturer, supplier, agent or maintenance undertaking is responsible under the terms of a guarantee or maintenance agreement;
- 4.3.3 **electrical or mechanical failure or damage** for which the **insured** is relieved of responsibility under any rental hire or lease agreement;
- 4.3.4 the cost of maintenance work;
- 4.3.5 **electrical or mechanical failure or damage** caused by a deliberate act of a supply undertaking in withholding the supply of electricity or telecommunication services unless for the sole purpose of safeguarding human life;
- 4.3.6 **electrical or mechanical failure or damage** caused by the inability of the supply undertaking to maintain the supply system due to industrial action by its employees;
- 4.3.7 **electrical or mechanical failure or damage** caused by the use of telecommunications equipment which is not approved by the telecommunications regulatory authority;
- 4.3.8 **electrical or mechanical failure or damage** caused by it undergoing any process of production, packaging, treatment, testing, commissioning, servicing or repair;
- 4.3.9 **electrical or mechanical failure or damage** caused by the use of unproven software which has not been finalised or which has not passed all the testing procedures or which has not been successfully proven;
- 4.3.10 **electrical or mechanical failure or damage** to **electronic data** or to electronic systems which processes, stores, transmits or retrieves **data** or any part thereof, whether tangible or intangible (including without limitation **computer records**, any information or programs or software), directly or indirectly caused by, occasioned by or arising from programming or operator error, **virus or similar mechanism** or **hacking**;
- 4.3.11 any amount pertaining to the value of **electronic data** to the **insured** or any other party, even if such **electronic data** cannot be recreated, gathered or assembled;
- 4.3.12 **damage** caused by or arising from the conditions of any test, experiment or conditions, routine inspection or the imposition of abnormal working conditions, including intentional overloading unless occurring without the knowledge or consent of the **insured**;
- 4.3.13 the cost of complying with building regulations or local authority or statutory requirements:  
a) relating to undamaged **building services equipment** or undamaged portions of **building services equipment**; or  
b) under which notice has been served prior to damage;
- 4.3.14 any rate, tax, duty, development or other charge or assessment arising out of capital appreciation as a result of complying with building regulations or local authority or statutory requirements;
- 4.3.15 liquidated damages, penalties for delay or detention or guarantees of performance or efficiency, delay, loss of use, loss of market, including pure economic loss or loss of revenue or any consequential loss of any kind whatsoever, except as specifically provided for herein;
- 4.3.16 breakdown, distortion or failure consisting of or caused by any form of corrosion or erosion, howsoever the same may arise but this exclusion shall not apply to breakdown, distortion or failure to any other part of the **building services equipment** free from such corrosion or erosion;
- 4.3.17 the **deductible** or **excess** shown in the **schedule** in respect of each and every event of **damage**;
- 4.3.18 **electrical or mechanical failure** caused to or in respect of any experimental or prototype **building services equipment**;
- 4.3.19 **electrical or mechanical failure or damage** caused by:  
a) inherent vice or latent defect; or  
b) its own faulty or defective design or materials; or

- c) faulty or defective workmanship by the **insured** or any **employee**; or
  - d) programming errors or design defects in software.
- 4.3.20 breakdown distortion or failure to any safety or protective device caused by its operation;
- 4.3.21 **damage** to cutters, bits, tools, moulds, dies, heating elements, driving belts, chains and similar items that require periodic replacement;
- 4.3.22 scratching of painted or polished surfaces;
- 4.3.23 **damage** caused by transit
- 4.3.24 **electrical or mechanical failure** consisting of or caused by gradually occurring wear and tear, deterioration or deterioration due to atmospheric or climatic conditions which is both predictable and inevitable from the normal usage of the **building services equipment** but this exclusion shall not apply to breakdown to any other part of the property free from such condition.

#### 4.4 Failure of building services other terms and conditions

##### 4.4.1 Basis of settlement- Building services equipment

If the **building services equipment** is damaged, the **insurer's** liability to the **insured** shall be:

- a) the repair of the breakdown and the restoration of the portion of **building services equipment** suffering breakdown to a working condition substantially the same as but not better or more extensive than its condition when new; or
- b) if the **building services equipment** suffers breakdown to the extent that it cannot be economically repaired, the replacement by new **building services equipment** of equal performance and/or capacity or if such be impossible replacement by new **building services equipment** having the nearest overall performance and/or capacity to the **building services equipment** which has suffered damage; or
- c) if the **insured** elects not to repair or replace the damaged **building services equipment** the **insurer's** liability shall not exceed the **actual value** of the **building services equipment** immediately prior to the occurrence of the damage.

The amount so payable under this clause shall include any additional cost as may be incurred in complying with building regulations or local authority or statutory requirements.

##### 4.4.2 Basis of settlement – general terms

- a) The work of reinstatement must be commenced and carried out with reasonable despatch, otherwise no payment will be made beyond the amount which would have been payable under this **insured section** if the Basis of settlement clauses had not been incorporated.
- b) The **insurer** will have no liability to pay any amount beyond the amount that would have been payable under this **insured section** if the Basis of settlement clauses had not been incorporated until such time as the cost of **reinstatement** has actually been incurred.
- c) If the **building services equipment** is covered by any other insurance effected by or on behalf of the **insured** but is not on the identical Basis of settlement to the terms of this clause, then this **policy** excludes and does not cover payment of any amount in excess of the amount that would have been payable if the Basis of settlement clauses had not been incorporated.
- d) Where this **policy** provides cover for **pressure explosion**, should any other surrounding plant and machinery at the time of its **damage** be insured by any other insurance effected by or on behalf of the **insured** which is not on the identical basis of settlement to the terms of this clause, then this **policy** excludes and does not cover payment of any amount in excess of the amount that would have been payable if the Basis of settlement clauses had not been incorporated.

#### 4.4.3 **Payments on account**

Where liability under this **policy** is admitted, the **insured** shall be entitled to receive payment(s) as agreed between the **insured** and the **insurer** in advance of final settlement provided always that:

- a) the aggregate amount of such payments shall not exceed the **sum insured** under the item for which the claim is being paid hereunder; and
- b) if the total adjusted loss under this **insured section** differs from the quantum of the payments made under this clause then the **insurer** and the **insured** mutually agree to pay or return the difference accordingly.

#### 4.4.4 **Reinstatement of loss**

In the absence of written notice by the **insurer** to the contrary, in consideration of the insurance by this **insured section** not being reduced by the amount of any loss, the **insured** shall pay an additional premium (to be calculated at the rate at which the premium is assessed on the amount of such loss) for the period from the date of loss to the expiry of the **period of insurance**.

#### 4.4.5 **Right to examine**

The **insurer's** representatives shall have the right to examine at all reasonable times any **building services equipment**.

### 4.5 **Conditions precedent for failure of building services**

#### 4.5.1 **Maintenance**

It is a condition precedent to the liability of the **insurer** under this **insured section** that all **building services equipment** shall be maintained in accordance with manufacturer's recommendations.

#### 4.5.2 **Prevention of further loss**

It is a condition precedent to the liability of the **insurer** under this **insured section** that, on the happening of any occurrence which might result in a claim under this **insured section**, the **insured** shall:

- a) immediately notify and send written confirmation to the **insurer**;
- b) discontinue the use of any **damaged building services equipment** unless the **insurer** authorises otherwise until such **building services equipment** shall have been repaired to the satisfaction of the **insurer**;
- c) keep for inspection by the **insurer** any damaged parts which are replaced.

#### 4.5.3 **Similar defects**

It is a condition precedent to the liability of the **insurer** under this **insured section** that if a development or discovery of a defect in any of the **building services equipment** shall indicate or suggest that a similar defect exists in other parts of the **building services equipment**, the **insured** shall forthwith investigate and if necessary rectify the defect in such other parts at its own expense or alternatively bear all losses arising out of the said defect.

#### 4.5.4 **Statutory inspections**

It is a condition precedent to the liability of the **insurer** under this **insured section** that where any **building services equipment** is subject to statutory inspection inspections are carried out in accordance with the relevant regulation, statute or order.

## 5 Insured section – Terrorism

### 5.1 Terrorism loss cover

Subject to the application of any applicable excess or deductible, the **insurer** will indemnify the **insured** in accordance with the terms of this **insured section** for losses arising under the **eligible insured sections** as a result of damage to or destruction of **property** in the **territory**, the proximate cause of which is an **act of terrorism**, provided that the **act of terrorism**:

5.1.1 occurs in the **territory** during the **period of insurance**; and

5.1.2 is certified by HM Treasury or a competent tribunal from time to time as an **act of terrorism**.

provided that in any action, suit or other proceedings where the **insurer** alleges that any damage or costs and expenses are not covered by this **policy**, the burden of proving the contrary will be upon the **insured**, save for clauses 5.2.1(b)(iii) and 5.2.1(c) where the burden of proof will be on the **insurer**.

### 5.2 Limitations and exclusions applicable to this insured section

The general policy exclusions do not apply to this **insured section**. Instead, the following are specifically excluded from the insurance under this **insured section**:

#### 5.2.1 Virus or similar mechanism, hacking, phishing or denial of service

- a) Any losses whatsoever directly or indirectly caused by, contributed to by, or arising from or occasioned by or resulting from:
  - i) damage to or the destruction of any **computer system**; or
  - ii) or any alteration, modification, distortion, erasure, or corruption of **data**in each case whether the property of the **insured** or not, where such loss is directly or indirectly caused by or contributed to by or arising from or occasioned by or resulting from a **virus or similar mechanism** or **hacking** or **phishing** or **denial of service attack**.
- b) Covered losses otherwise falling within this exclusion will not be treated as excluded by this clause solely to the extent that such loss:
  - i) results directly from any of the **specified perils**;
  - ii) comprises any of the **specified losses**; and
  - iii) is not proximately caused by an **act of terrorism** in relation to which the relevant organisation or any persons acting on behalf of or in connection with that organisation are controlled by, acting on behalf of or part of any de jure or de facto government of any nation, country or state.
- c) Notwithstanding the exclusion of **data** from the definition of **property** in this **insured section**:
  - i) to the extent that damage to or destruction of **property** comprises any of the **specified losses**; and
  - ii) that damage or destruction indirectly results from any alteration, modification, distortion, erasure or corruption of **data**;the fact that a **specified peril** results directly or indirectly from any alteration, modification, distortion, erasure or corruption of **data** shall not prevent cost or business interruption loss directly resulting from damage to or destruction of such **property** (and otherwise falling within **specified losses** or **specified perils**) from being recoverable under this **policy**.

In no other circumstances, however, will any loss or losses directly or indirectly caused by, contributed to by or arising from or occasioned by or resulting from any

alteration, modification, distortion, erasure or corruption of **data** be recoverable under this **policy**.

5.2.2 **War**

Any losses whatsoever occasioned by riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power.

**5.3 Other terms and conditions applicable to this insured section**

5.3.1 The **insurer's** liability under this **insured section** in any one (1) **period of insurance** shall not exceed the **sum insured** stated in the **schedule** for the applicable **insured section** shown as insured in the **schedule** in respect of all losses arising out of any one (1) **occurrence** and in the aggregate.

5.3.2 Where the **period of insurance** shown in the **schedule** is for a period greater than twelve (12) months, the cover provided by this **insured section** shall only apply for a period of twelve (12) months and shall be subject to renewal at each annual anniversary.

5.3.3 **Restricted terms**

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

- a) long term undertaking;
  - b) terms which provide for adjustments of premium based upon declarations on expiry or during the **period of insurance**; or
  - c) coverage in respect of **premises** in locations outside England and Wales and Scotland;
- will not apply to losses covered under this **insured section**.

## 6 Exclusions to Insured sections – Property, Loss of rent receivable, Failure of building services & Terrorism

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

### 6.1 Aircraft travelling at supersonic speeds

**damage**, or loss or interruption or interference caused by or consisting of, pressure waves caused by aircraft, other aerial or spatial device travelling at sonic or supersonic speeds but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

### 6.2 Boiler explosion and failure

6.2.1 **damage**, or loss or interruption or interference caused by explosion, failure or collapse of a boiler (but not a boiler or economiser used for domestic purposes only) economiser or other vessel, machine, apparatus or pipe work at the **premises** in which internal pressure is due to steam only belonging to, or under the control of, the **insured**;

6.2.2 **damage**, or loss or interruption or interference caused by joint leakage failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers, superheaters, pressure vessels of any range of steam, and feed piping in connection therewith;

but this clause will not apply to loss covered under the **insured section**- loss of rent receivable or the **insured section**-failure of building services if stated as being 'insured' in the **schedule**, and shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

### 6.3 Deductible or excess

the amount of the **deductible** or **excess** as stated in the **schedule**. Where any amount is specified as the non ranking **deductible** or **excess** then this sum is also excluded from this insurance.

### 6.4 Defective design

**damage**, or loss or interruption or interference caused by defective design, latent defect, the use of defective materials, the misapplication of tools or other defective workmanship but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

### 6.5 Disused, unoccupied or vacant buildings

**damage**, or loss or interruption or interference caused by:

- a) escaping water from any pipe, tank, water system or automatic sprinkler installation;
- b) riot, civil commotion, malicious **damage** or vandalism; or
- c) theft or theft damage;

in respect of any **building** which is **unoccupied**.

### 6.6 Electronic risks

**damage**, or loss or interruption or interference caused by or contributed to by, directly or indirectly, distortion, erasure, corruption, or alteration of **electronic data** from any cause whatsoever (including, but not limited to, **virus or similar mechanism, hacking or denial of service attack**) or loss of use, reduced functionality, cost, expense of whatsoever nature resulting therefrom regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

### 6.7 Electrical or mechanical breakdown

**damage**, or loss or interruption or interference caused by electrical or mechanical breakdown or failure or derangement including but not limited to overrunning, overheating or

short-circuiting, but not excluding any other **damage** resulting from such breakdown, failure or derangement;

but this exclusion will not apply to property expressly covered by **insured section**- Failure of building services if stated as being 'insured' in the **schedule**, and shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## **6.8 Fines or penalties**

finer or damages for breach of contract or any penalties of whatsoever nature.

## **6.9 Frost**

**damage**, or loss or interruption or interference caused by frost or freezing but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## **6.10 Gradual change**

**damage**, or loss or interruption or interference caused by corrosion, gradual change or deterioration, change of temperature, change of colour, texture or finish or inherent vice, rust, shrinkage, infestation, insects or vermin but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## **6.11 Ionising radiation**

**damage**, or loss or interruption or interference caused directly or indirectly by or contributed to by or in connection with **nuclear hazards** but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## **6.12 Marine impact**

**damage**, or loss or interruption or interference caused by impact with any **property insured** by any waterborne vessel or craft.

## **6.13 Marine insurance cover**

**damage**, or loss or interruption or interference caused by **damage** regarding import shipments until fully discharged or until marine insurance has ceased to cover, whichever last occurs.

## **6.14 Micro-organism**

**damage**, or loss or interruption or interference caused by mould, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health except that this exclusion does not apply in respect of the insurance provided by the Notifiable disease, murder or suicide, food or drink poisoning clause under **Insured section** – Loss of rent receivable.

This exclusion applies regardless whether there is any:

- a) **damage to property insured**;
- b) **insured peril** or cause, whether or not contributing concurrently or in any sequence;
- c) loss of use, occupancy, or functionality; or
- d) action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

## **6.15 Non-specific loss or damage**

**damage**, or loss or interruption or interference:

- a) caused by or resulting from disappearance or which is not identifiable by the **insured** with a specific occurrence or which is unexplained and which has not been notified under the terms of the claims notification clause;
- b) revealed only during an inventory or stocktaking;
- c) caused by or arising from misfiling or misplacing of property, information or **data**.

## 6.16 Pollution

**damage**, or loss or interruption or interference caused by pollution or contamination but this exclusion shall not apply to **damage**, or loss or interruption or interference caused by:

- a) pollution or contamination which itself results from a defined peril;
- b) a defined peril which itself results from pollution or contamination;

and for the purpose of this exclusion, defined peril means fire, lightning, explosion, earthquake, aircraft or other aerial device or satellite or missile or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons other than thieves, windstorm, flood, escape of water or oil from any tank or pipe sprinkler leakage, theft or impact by any vehicle or animal provided that such defined perils are included under the **insured section**- property.

## 6.17 Processing

**damage**, or loss or interruption or interference caused by the **property insured**:

6.17.1 undergoing any process including but not limited to, cleaning, repairing, restoring, renovating, testing, commissioning or packaging;

6.17.2 itself undergoing any heating process or any process involving the application of heat but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## 6.18 Riot

**damage**, or loss or interruption or interference occurring in Northern Ireland caused by or happening through or in consequence directly or indirectly of riot or civil commotion or any unlawful association as defined by the Northern Ireland (Emergency Provisions) Act 1973.

## 6.19 Subsidence or collapse

in respect of **buildings**:

6.19.1 subsidence or collapse caused by the bedding down of new structures, by settlement;

6.19.2 subsidence or collapse caused by coastal or river erosion;

6.19.3 subsidence or collapse of buildings or any part thereof whilst in the course of erection or undergoing demolition, structural alterations or structural repairs;

6.19.4 **damage** caused by subsidence or collapse which commenced and of which the **insured** was aware prior to the acceptance of this insurance by the **insurer** ;

6.19.5 subsidence or collapse caused by the movement of reclaimed or made up ground or of any building erected on a mining site;

6.19.6 **damage** caused by the **buildings'** own collapse or cracking however the **insurer** will indemnify the **insured** in respect of such **damage** if it results from a cause which is not otherwise excluded;

but this exclusion of subsidence and collapse shall not apply to subsidence caused by fire, explosion, earthquake or the escape of water from any tank, apparatus or pipe.

## 6.20 Theft and fraud

6.20.1 **damage**, or loss or interruption or interference caused by:

- a) theft or attempted theft by any person lawfully on the **premises** unless involving entry to or exit from buildings at the **premises** by forcible and violent means or by violence or threat of violence provided that this exclusion will not apply to **damage** to the **buildings**;
- b) dishonesty of the **insured's employees**;
- c) any fraudulent or dishonest accessing, extraction, distortion, misappropriation or corruption of information or **data** contained in any computer or **electronic data** equipment or system.

## 6.21 War and terrorism

6.21.1 **damage**, or loss or interruption or interference caused by or contributed to, by or in connection with, in whatever form, directly or indirectly, any act of **war** or **terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss nor will the **insurer** have any liability for loss, **damage**, costs and expenses directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action controlling, preventing, suppressing, retaliating against or responding to any act of **war** or **terrorism**.

6.21.2 In any action, suit or other proceedings where the **insurer** alleges that by reason of this exclusion any loss, destruction, **damage**, cost, expense, consequential loss or injury is not covered by this **policy**, the burden of proving that such loss is covered shall be upon the **insured**.

Except that this exclusion will not apply to **terrorism** as specifically covered by the **insured section terrorism** if this is stated as being 'insured' in the **schedule**.

## 6.22 Water table level

**damage**, or loss or interruption or interference caused by change in water table level but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded. For the purpose of this exclusion water table level means the vertical distance from the surface of the earth to underground water being the surface at which the soil or rocks are permanently saturated with water.

## 6.23 Wear and tear

**damage**, or loss or interruption or interference caused by wear and tear, marring or scratching but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

## 7 Insured section – Employers' liability

### 7.1 Employers' liability cover

- 7.1.1 The **insurer** agrees to indemnify the **insured** for all sums that the **insured** will become legally liable to pay as damages or compensation, including claimant costs recoverable from the **insured**, arising out of **bodily injury** caused during the **period of insurance** to an **employee** who, at the time of the cause, was working in the course of employment by the **insured** in the **business** except that where such employment is undertaken temporarily outside the **United Kingdom**:
- a) the **employee** must be intending to return to the **United Kingdom** following completion of the temporary overseas employment; and
  - b) the temporary overseas employment outside the **United Kingdom** is not intended or planned to exceed twelve (12) months duration; and
  - c) any temporary overseas employment applies outside the **United Kingdom** only to clerical, promotional, sales conference attendance and other similar non-manual work.
- 7.1.2 Unless expressly stated to the contrary, cover granted by any clause or any endorsement to this **policy** does not increase the **limit of indemnity**. Any **sub-limit of indemnity** stated forms part of and is not additional to the **limit of indemnity**.

### 7.2 Employers' liability defence costs

Following any event which is or may be the subject of indemnity under the Employers' liability cover clause above whether or not **bodily injury** has occurred the **insurer** agrees to indemnify the **insured** for **defence costs** but such defence costs form part of the **limit of indemnity** and do not increase the **limit of indemnity** or any **sub-limit of indemnity**.

### 7.3 Employers' liability extensions

#### 7.3.1 Contractual liability

Where any contract or agreement entered into by the **insured** so requires the **insurer** will indemnify the **insured** against liability arising in connection with and assumed by the **insured** by virtue of such contract or agreement but only so far as concerns liability as defined in this **insured section to employees** of the **insured** provided that the terms and conditions of this insurance will apply as far as may be practicable.

#### 7.3.2 Cross liabilities

For each legal entity constituting the **insured**, the **insurer** will separately indemnify each party as if a separate **policy** had been issued to each. Where claims are made against any such **insured** by any other **insured**, the **insurer's** total liability to all parties will not exceed the **limit of indemnity** or any applicable **sub-limit of indemnity**.

#### 7.3.3 Data Protection

The **insurer** will indemnify the **insured** and, if the **insured** so requires, any **employee** in respect of their liability to pay:

- a) any valid compensation, including any associated defence costs, in respect of:
  - i. damage or distress under section 13 of Part II of the Data Protection Act 1998 ('DPA'), or any equivalent provision under any subsequent amending or replacement legislation; or
  - ii. material or non-material damage under Article 82 of the General Data Protection Regulation ('GDPR'),

first occurring during the **period of insurance** and resulting in a claim or claims brought by any **employee** and notified to the **insurer** during the **period of insurance**; and

- b) defence costs in relation to a prosecution commenced during the period of insurance under the DPA, any subsequent amending or replacement legislation or the GDPR and incurred with the prior written consent of the insurer.

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this policy, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR;
- d) claims which arise out of circumstances that are notified to any previous insurer or known to the insured at inception of this policy;
- e) liability for which indemnity is provided under any other insurance; or
- f) claims or prosecutions brought against the insured outside the Courts of the United Kingdom.

#### 7.3.4 Indemnity to other parties

At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this **policy** had the claim or suit been made against the **insured**;
- b) **insurer** has the sole conduct and control of any claim as far as may be practical;
- c) **other insured party** shall, as though he were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply;
- d) **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**.

#### 7.3.5 Medical treatment

This insurance extends to indemnify the **insured** and any qualified medical practitioner or health care practitioner employed by the **insured** in respect of liability to any person under a contract of service or apprenticeship with the **insured** resulting from treatment given provided that:

- a) any such qualified medical practitioner or health care practitioner shall, as though they were the **insured**, be subject to the terms of this **policy** in so far as they can apply; and
- b) the indemnity granted by this clause shall not apply where there is any other valid or collectible insurance available to the **insured**, the qualified medical practitioner or health care practitioner nor shall this insurance contribute to any other valid or collectible insurance.

#### 7.3.6 Principals

The **insurer** will indemnify any party including any principal whom under contract or agreement the **insured** has agreed to indemnify and/or insure but only to the extent required by such contract or agreement and only to the extent that liability arises solely out of the work performed for the principal by or on behalf of the **insured** and provided that:

- a) such party shall, as though they were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**;

and, for the avoidance of doubt, to the extent only of the indemnity provided by this **insured section**.

#### 7.3.7 Statutory defence costs including Health and Safety At Work, etc. Act 1974

- a) The **insurer** agrees to indemnify the **insured** and at the request of the **insured**, any **other insured party**, in respect of **defence costs** reasonably incurred with the prior consent of the **insurer** in defending:
- i) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and/or
  - ii) any alleged breach of statutory duty under the Protection from Harassment Act 1997; and/or
  - iii) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;
- provided that the prosecution or proceedings relate to:
- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**; and
  - iv) **bodily injury** to or potential insured claim for **bodily injury** to **employees** including their health, safety and welfare.
- b) The **insurer** will also indemnify the **insured** for:
- i) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with the prior consent of the **insurer**
  - ii) prosecution costs awarded against the **insured**.
- c) The indemnity by this clause excludes and does not cover any amount:
- i) in respect of allegations provided by this clause (Statutory defence costs) but not those relating to prosecution costs (clause iii) below) or manslaughter, corporate manslaughter or corporate homicide (clause ii) below), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
  - ii) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide including prosecution costs relating to this item ii) (manslaughter defence costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
  - iii) in respect of prosecution costs other than such costs relating to item ii) above (prosecution costs) in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings.

#### 7.3.8 Unsatisfied court judgments

In the event of a judgment for damages being obtained during the **period of insurance**:

- a) by any **employee** or the personal representatives of any **employee** in respect of **bodily injury** to such **employee** that arises out of and in the course of his employment by the **insured** in the **business**, against any person operating from premises in the European Economic Area; and
  - b) which remains unsatisfied in whole or in part six (6) months after the date of such judgment; and
  - c) in any court of law except a court operating under the laws of **North America**;
- then at the **insured's** request, the **insurer** will pay the amount of damages or costs awarded to the **employee** or the personal representatives of the **employee** to the extent that they remain unsatisfied provided that:
- i) there is no appeal outstanding; and
  - ii) the judgment relates to **bodily injury** which would otherwise be indemnified by this **insured section**; and
  - iii) the **insurer** will be entitled to take over and prosecute for its own benefit any claim against any other person and the **insured**, the **employee** or the personal

representatives of the **employee** will give the **insurer** all the information and assistance the **insurer** may require.

#### 7.3.9 **War and terrorism**

The insurance by this **insured section** is extended to cover liability to an **employee** arising from or caused by an act of **war** or **terrorism** except that the **insurer** shall not be liable to pay any amount in excess of a **sub-limit of indemnity** for **war** and **terrorism** stated in the **schedule** in respect of:

- a) any one claim against the **insured** or series of claims against the **insured**; and
- b) any claim or series of claims made by the **insured** under this **insured section**; arising out of one occurrence.

#### 7.3.10 **Waiver of subrogation**

In respect of contracts or agreements which impose upon the **insured** conditions waiving the rights of the **insured** to recover from any other party, the **insurer** agrees to the extent required by such contract or agreement to waive any rights of subrogation to which they might otherwise have been entitled in such circumstances in respect of any payments which they may make under this **policy**.

Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent.

For the purpose of this clause, subrogation means the right of the **insurer** who has granted indemnity to take over any recovery rights the **insured** may have against third parties liable for the same loss.

### 7.4 **Employers' liability limitations and exclusions**

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

#### 7.4.1 **Data protection liabilities**

liability which arises under the Data Protection Act 1998 ('DPA'), any subsequent amending legislation or the General Data Protection Regulation ('GDPR') other than as provided for by the 'Data Protection' extension clause;

#### 7.4.2 **Employment practices dispute**

liability which arises out of employment practice disputes directly or indirectly related to employment or prospective employment of any person or persons by the **insured** including but not limited to:

- a) wrongful unfair or constructive dismissal;
- b) denial of natural justice, defamation, misleading representation or advertising;
- c) refusal to employ a suitably qualified applicant or failure to promote;
- d) coercion, demotion, evaluation, relocation, punishment, slander, humiliation, harassment, bullying or discrimination

but this exclusion shall not apply in respect of compensatory damages for **bodily injury** required by the Employers' Liability (Compulsory insurance) Regulations 1998.

#### 7.4.3 **Fines and penalties**

liability for payment of any fines or penalties imposed or ordered to be paid.

#### 7.4.4 **Limit of indemnity**

liability in excess of the **limit of indemnity** stated in the **schedule**.

#### 7.4.5 **North American jurisdiction**

liability for payment of any judgment, award, payment or settlement made (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part) within countries which operate under the laws of **North America** to:

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

c) pay punitive, multiple or exemplary damages.

**7.4.6 Nuclear hazards**

liability that attaches by or arising from the terms of any contract (other than contracts of employment between the **insured** and its employees) or agreement for **bodily injury** caused by **nuclear hazards**.

**7.4.7 Offshore**

liability which arises directly or indirectly out of or caused by visits, work or activities undertaken **offshore**.

**7.4.8 Road traffic legislation**

liability for **bodily injury** sustained by an **employee** when the **employee** is

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

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

**7.4.9 War or terrorism**

liability which arises directly or indirectly out of or caused by **war** or **terrorism** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by the War and terrorism clause.

**7.4.10 Workman's compensation or social security payment**

any obligation for which the **insured** or **insurer** may be held liable under any workers' compensation law, legislation, regulation or policies or obligation to maintain healthcare, social security or similar funding but this exclusion will not apply to payments required to be made to the Compensation Recovery Unit or its successor.

**7.5 Other employers' liability terms and conditions**

**7.5.1 Conflict of interest**

In the event of a conflict of interest between the **insured** and any **other insured party** indemnified by this insurance, separate representation will be arranged for each party.

## 8 Insured section – Property owners' liability

### 8.1 Property owners' liability cover

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured**, arising from **personal injury, damage, denial of access** or nuisance that occurs during the **period of insurance** and arises out of and in connection with the **business**.

### 8.2 Property owners' liability defence costs

#### 8.2.1 North American jurisdiction

Where any clause or endorsement to this **policy** extends cover to apply to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** count towards and are not additional to the **limit of indemnity**.

#### 8.2.2 All other jurisdictions

- a) For claims not involving **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** are payable in addition to and do not count towards the **limit of indemnity**.
- b) Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 8.3 Property owners' liability extensions

#### 8.3.1 Data Protection

The **insurer** will indemnify the **insured** and, if the **insured** so requires, any director, partner or **employee** in respect of their liability to pay:

- a) any valid compensation, including any associated defence costs, in respect of:
  - i. damage or distress under section 13 of Part II of the Data Protection Act 1998 ('DPA'), or any equivalent provision under any subsequent amending or replacement legislation; or
  - ii. material or non-material damage under Article 82 of the General Data Protection Regulation ('GDPR'),  
first occurring during the **period of insurance** and resulting in a claim or claims brought by any person not being a director, partner or **employee** and notified to the **insurer** during the **period of insurance**; and
- b) **defence costs** in relation to a prosecution commenced during the **period of insurance** under the DPA, any subsequent amending or replacement legislation or the GDPR and incurred with the prior written consent of the **insurer**.

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this **policy**, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR;
- d) claims which arise out of circumstances that are notified to any previous **insurer** or known to the insured at inception of this policy;
- e) liability for which indemnity is provided under any other insurance; or

- f) claims or prosecutions brought against the insured outside the Courts of the United Kingdom.

The **insurer's** maximum liability during the **period of insurance** in respect of all claims under this extension shall not exceed the **sub-limit** stated in the **schedule**, which amount shall be inclusive of all **defence costs** and shall be part of and not in addition to the **limit of indemnity** specified in the **schedule**.

#### 8.3.2 **Defective Premises Act 1972**

The insurance provided by this **insured section** is extended to indemnify the **insured** against any liability incurred by the insured by virtue of Section 3 of the Defective Premises Act, 1972 or Section 5 of the Defective Premises Act (Northern Ireland) Order 1975 or any amendment thereto in connection with premises that have been disposed of by the **insured**, except that the **insurer** will not be liable to provide an indemnity for the cost of remedying any defect or alleged defect in such premises.

#### 8.3.3 **Run off cover for legionella claims made basis**

- a) In the event and to the extent that any policy of insurance in force immediately prior to this **policy** expressly provided cover for legionella on the basis of an indemnity for claims made during the **period of insurance** (claims made basis); and
- b) In the event that a claim first made against the **insured** during the **period of insurance** in respect of legionella (meaning any discharge, release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like)

then the insurance by this **insured section** is extended to indemnify the **insured** in respect of liability for **bodily injury** arising from legionella provided that:

- i) the discharge, release or escape of legionella occurred prior to the inception of this **policy** but after the retroactive date stated in any prior policy or if no such date is stated then after 1<sup>st</sup> January 2010
- ii) the **insured** will give notice in writing to the **insurer** of any claim or any notice of an intention to make a claim as soon as reasonably practicable but in any event not later than twenty eight (28) days from receipt of the claim or notice.

#### 8.3.4 **Temporary business trips overseas**

At the request of the **insured**, this **insured section** is extended to indemnify the **insured** and any **employee** or director of the **insured** (including their family or persons normally resident with them) against legal liability as described in Property owners' liability cover above but incurred whilst outside the **United Kingdom** provided that:

- a) legal liability is incurred in a personal capacity whilst undertaking a **business trip**;
- b) such temporary **business trip** outside the **United Kingdom** does not exceed twelve (12) months;
- c) such liability does not arise out of the ownership or occupation of land or buildings.

### 8.4 **Property owners' liability limitations and exclusions**

In addition to the exclusions set out in 'Exclusions to Property owners', Products and Pollution liability', this **insured section** excludes and does not cover:

#### 8.4.1 **Materials prior to installation**

**damage** to materials, parts or equipment furnished in connection with performance of the **work away** but this limitation shall not be applied to **products** previously supplied under any previous contract;

#### 8.4.2 **Pollution and products**

liability arising from **personal injury, damage, denial of access** or nuisance arising out of or from or:

- a) brought about by or contributed to by **pollution**;

b) in connection with a **product**;

8.4.3 **Rectification of defective work**

a) **damage** to; or

b) any expenditure incurred by the **insured** for the removal, repair, adjustment, alteration, reinstatement, withdrawal, inspection or disposal of

any property (including any part of the property) furnished in connection with performance of **work away** as a result of any defect (suspected or known) therein or any unsuitability for its intended purpose.

## 9 Insured section – Products liability

### 9.1 Products liability cover

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured** arising from **personal injury, damage, denial of access** or nuisance that occurs during the **period of insurance** and arising out of or arising from or in connection with a **product**.

### 9.2 Products liability defence costs

#### 9.2.1 North American jurisdiction

Where any clause or endorsement to this **policy** extends cover to apply to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** count towards and are not additional to the **limit of indemnity**.

#### 9.2.2 All other jurisdictions

- a) For any matter other than **North America**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** are payable in addition to and do not count towards the **limit of indemnity**.
- b) Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 9.3 Property owners' liability limitations and exclusions

In addition to the exclusions set out in 'Exclusions to Property owners', Products and Pollution liability', this **insured section** excludes and does not cover:

#### 9.3.1 Pollution

liability arising out of or from or brought about by or contributed to by **pollution**.

## 10 Insured section – Pollution liability

### 10.1 Pollution liability

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured** arising from **personal injury, damage, denial of access** or nuisance occurring in its entirety during the **period of insurance** arising out of or from **pollution**, provided that such **pollution**:

- a) arises solely out of the course of the **business**; and
- b) is the direct result of a sudden, specific and identifiable event occurring during the **period of insurance**.

### 10.2 Pollution liability defence costs

10.2.1 Except for any matter relating to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** which are payable in addition to and do not count towards the **limit of indemnity**.

10.2.2 Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 10.3 Pollution liability extensions

#### 10.3.1 Environmental statutory liability

The insurance provided by this **insured section** is extended to indemnify the **insured** for all sums, including statutory debts, that the **insured** is legally liable to pay or legally obliged to incur for remediation in respect of environmental damage where such liability arises under an environmental protection directive, statute or statutory instrument, provided that:

- a) liability arises from **pollution** occurring during the course of **business**, within a state of the European Union and is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**;
- b) the insurance by this extension excludes and does not cover any sum incurred in respect of:
  - i) **preventative costs** for prevention of imminent threat of environmental damage;
  - ii) primary, complementary or compensatory remediation for damage;
  - iii) the removal of any significant risk of an adverse effect on human health; to or on the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control;
- c) the insurance by this extension excludes and does not cover any sum incurred in achieving any improvement or alteration in the condition of the land, the atmosphere or any watercourse or body of water beyond that required under any relevant and applicable law or statutory enactment at the time remediation commences; and
- d) the total amount payable by the **insurer** inclusive of all **defence costs** for any one occurrence or in the aggregate during any one **period of insurance** shall not exceed the **sub-limit of indemnity** as stated in the **schedule**;

and provided also that the exclusion in proviso b) i) above shall not apply to **preventative costs** that are incurred with the **insurer's** written consent that must be obtained prior to each claim, where a **pollution** event is taking place or has occurred and such **preventative costs** relate solely to halt or limit further **pollution** to third party property except that nothing in this clause shall imply that the **insurer** will indemnify the **insured** for **preventative costs** relating to the **insured's** own land, premises or watercourse or body of water.

## **10.4 Pollution liability limitations and exclusions**

In addition to the exclusions set out in 'Exclusions to Property owners', Products and Pollution liability' this **insured section** excludes and does not cover:

### **10.4.1 Owned or previously owned premises**

liability for **damage, denial of access** or nuisance to land or **premises** (including land or water within or below the boundaries of such land or **premises**) that are presently or were at any time previously owned, leased, hired or tenanted by the **insured** or otherwise in the **insured's** care, custody or control.

## 11 Insured section – Coverage extensions to Property owners', Products and Pollution liability

### 11.1 Asbestos accidental discovery

Notwithstanding the Asbestos exclusion contained in the Exclusions to Property owners', Products and Pollution liability, the **insurer** agrees to indemnify the **insured** in respect of liability arising following the accidental discovery of asbestos and/or asbestos containing materials on or after the retroactive date but only in respect of claims first made against the **insured** and notified to the **insurer** during the **period of insurance** in accordance with the terms of the **policy**.

Provided always that:

- a) no indemnity is provided in respect of any subsequent activities related or connected to dealing with the asbestos and/or asbestos containing materials once discovered, which shall be carried out by qualified licensed sub-contractors on terms which indemnify the **insured** for liability arising out of such work;
- b) the **insurer** agrees that any circumstance(s) notified to it 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**;
- c) the **insurer** will not indemnify the **insured** for any claims arising from the existence of or exposure to asbestos and/or asbestos containing materials where the **insured** were aware of the circumstance or event which gave rise to the claim before the inception date of this **policy**;
- d) the **insurer** will not indemnify the **insured** for any claims in respect of the diminution in the value of property or loss of or potential loss of rental income or any other consequential losses (including business interruption) howsoever arising;
- e) the **insurer's** liability to pay damages, including claimant costs recoverable from the **insured** and **defence costs** shall not exceed the **sub-limit of indemnity** stated in the **schedule** for any one (1) claim which sum shall be the maximum the **insurer** will pay in the aggregate during any one **period of insurance**;
- f) the **excess** applicable to this clause shall be GBP5,000 each and every claimant;
- g) the retroactive date in respect of this clause is the inception date of this **policy** unless endorsed otherwise.

### 11.2 Contractual liability

Subject always to the exclusions 'North American jurisdiction' and 'North American territory', where any contract or agreement entered into by the **insured** so requires the **insurer** will indemnify the **insured** against liability arising in connection with and assumed by the **insured** by virtue of such contract or agreement but only so far as concerns liability as defined in these **insured sections** provided that the terms and conditions of this insurance will apply as far as may be practicable.

### 11.3 Cross liabilities

For each legal entity constituting the **insured**, the **insurer** will separately indemnify each party as if a separate **policy** had been issued to each. Where claims are made against any such **insured** by any other **insured**, the **insurer's** total liability to all parties will not exceed the **limit of indemnity** or any applicable **sub-limit of indemnity**.

### 11.4 Financial loss including products

- 11.4.1 Notwithstanding the exclusion of financial loss, the insurance provided by the **insured sections** - Property owners' and Products liability is extended to include the **insured's** liability for a claim or claims first made against the **insured** and notified in writing to the **insurer** during the **period of insurance** for liability arising out of and in connection with the **business** or the **insured's products** for financial loss incurred by others caused by:

- a) accidental escape or discharge of any substance or gas from any **premises** owned or occupied by the **insured**;
- b) accidental obstruction or loss of amenities; or
- c) an occurrence that is not a deliberate or intentional act by or omission of any party entitled to indemnity by this **insured section** the purpose of which whether wholly or in part, is to cause financial loss.

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

- a) financial loss incurred in respect of or in consequence of **personal injury, damage, nuisance or denial of access**;
- a) financial loss incurred in respect of any recall of any **product** or in the replacing or making good any **product** or workmanship performed by or on behalf of the **insured**;
- b) financial loss incurred in respect of any designing or redesigning, engineering or re-engineering any of the **insured's products**;
- c) fines, penalties, multiplied or liquidated damages;
- d) liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement;
- e) liability resulting from conspiracy, conversion, deceit, inducement of breach of contract, injurious falsehood or infringement of patent, copyright, trademark or name;
- f) claims brought in the United States of America arising out of any breach or alleged breach of antitrust laws or similar;
- g) claims which arise out of circumstances notified to previous insurers or known to the **insured** at inception of this policy;
- h) liability arising from any advice, instruction or design;
- i) given for a fee by or on behalf of the **insured** unless relating to any **product** for which indemnity is provided by this **insured section**;
- j) given without a fee and for which indemnity is provided by other insurance;
- k) liability arising from or caused by the publication or utterance by or on behalf of the insured of a libel or slander;
- l) liability arising out of or in connection with any strikes or labour disturbances;
- m) financial loss caused by or arising from any delay or non-completion of any **product** or workmanship by the **insured** unless such financial loss arises directly as an unavoidable consequence, after exhaustion of reasonable endeavours by the **insured** to avoid and mitigate any such financial loss and which arises as a direct consequence of an insured event;
- n) diminution in values of real property;
- o) financial default as a result of or inconsequence of bankruptcy or insolvency.

11.4.3 The insurance by this clause excludes and does not cover any claim for liability where the event giving rise to financial loss occurs prior to the retroactive date being the inception of this insurance.

11.4.4 The **limit of indemnity** under this extension clause shall not exceed the **sub-limit of indemnity** stated in the **schedule** in respect of any one claim and in the aggregate during any one **period of insurance** which shall be the maximum amount payable by the **insurer** including all **defence costs**.

## 11.5 Indemnity to other parties

At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this policy had the claim or suit been made against the **insured**;
- b) **insurer** has the sole conduct and control of any claim;

- c) **other insured party** shall as though he were the **insured** observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply;
- d) **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**

## 11.6 Local Democracy, Economic Development and Construction Act 2009

The **insurer** will indemnify the **insured** and any **other insured party** in respect of liability which the **insured** may incur in respect of any claim(s) first made against the **insured** during the **period of insurance** for claimants' costs and expenses arising from any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Local Democracy, Economic Development and Construction Act 2009 (formerly Housing Grants, Construction and Regeneration Act 1996) or an adjudication clause or rules contained in a contract.

## 11.7 Managing agents clause

It is agreed that in respect of liability arising in connection with any buildings owned but not occupied by the **insured**, if the **insured** so requests, this **policy** will extend to indemnify the managing agents as declared to the **insurer** in the same manner and to the same extent as if a separate policy had been issued to them, provided that:

- a) the managing agent shall as if they were the **insured** be subject to the terms and conditions of **policy** in so far as they can apply;
- b) the total amount payable under this clause and this **insured section** shall not exceed the **limit of indemnity** stated in the **schedule** regardless of the number of persons claiming to be indemnified.

## 11.8 Motor liability

Notwithstanding the exclusion 'Ownership or use of mechanically propelled **vehicles**', the **insurer** agrees to indemnify the **insured** and any **other insured party** in respect of liability arising out of or from:

- a) the use or movement of any mechanically propelled **vehicle** as a tool or plant;
- b) the loading or unloading of any mechanically propelled **vehicle** or trailer when carried out beyond the limits of any carriageway or thoroughfare but this extension shall not apply to **damage** to any property being loaded or unloaded;
- c) the movement of any mechanically propelled **vehicle** not owned, hired or borrowed by or leased to the **insured** or any **other insured party** on or under any **premises** occupied by the **insured** where such **vehicle** is causing an obstruction and interfering with the performance of the **business**;
- d) **damage** to visitors' or **employees'** mechanically propelled vehicle (including contents and/or accessories) while parked within any car park for which the **insured** is responsible or on any **premises** occupied by the **insured** provided that:
  - i) such vehicle is not lent or hired to the **insured**;
  - ii) the damage to an **employee's** vehicle does not arise out of the maintenance, operation or use of a vehicle by that **employee**;
- e) the unauthorised use of any mechanically propelled **vehicle** by any person in the employment of the **insured** provided that the **insured** shall have taken all reasonable precautions to ensure that its **employees** are made aware of and comply with restrictions applicable to the use of the **vehicle**;

except always that the indemnity provided by this clause excludes liability:

- i) for which indemnity is provided by any motor insurance or fleet insurance policy held in the name of the **insured**; or
- ii) for which insurance is necessary to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil

liability in respect of the use of motor vehicles or similar legislation in any country outside the European Union.

### 11.9 Motor contingent liability

Notwithstanding the exclusion 'Ownership or use of mechanically propelled vehicles', the **insurer** agrees to indemnify the **insured** in respect of liability arising out of or from the operation or use of any mechanically propelled vehicle not owned, hired or borrowed by or leased to the **insured** which is used in the course of **business** provided that this clause excludes and the **insurer** will not be liable for:

- a) **damage** to such vehicle or to property conveyed therein or thereon,
- b) **bodily injury** or **damage** arising while such **vehicle** is being driven by;
  - i) any **other insured party** other than an **employee**; or
  - ii) any person who to the **insured's** knowledge or the knowledge of any director, officer or manager of the **insured**, does not hold a licence to drive such **vehicle**;
- c) **bodily injury** or **damage** caused or arising while such **vehicle** is:
  - i) engaged in racing, pace-making, reliability trials or speed testing;
  - ii) being used outside the European Union;
- d) **bodily injury** or **damage** in respect of which the **insured** or any **other insured party** is entitled to indemnity under any other insurance.

### 11.10 Principals

The **insurer** will indemnify any party including any principal whom, under contract or agreement, the **insured** has agreed to indemnify and/or insure but only to the extent required by such contract or agreement and only to the extent that liability arises solely out of the work performed for the principal by or on behalf of the **insured** and provided that:

- a) such party shall, as though they were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**;

and, for the avoidance of doubt, to the extent only of the indemnity provided by this **insured section**.

### 11.11 Property in the insured's care, custody and control

Notwithstanding the exclusion of 'Property in the insured's care, custody and control' but subject always to the exclusion 'Owned or previously owned premises' under 'Pollution liability', the **insurer** agrees to extend coverage under the Property owners', Products and Pollution liability **insured sections** to indemnify the **insured** in respect of liability arising out of or from:

- a) **damage** to personal effects (including vehicles and their contents) of **employees** or the **insured's** directors, officials, visitors or guests;
- b) **damage** to **premises** including landlord's contents, fixtures and fittings not owned by the **insured** but leased or rented by them in the course of **business** but always excluding liability:
  - i) which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement; or
  - ii) for which indemnity to the **insured** is provided under any other insurance or in any other way;
- c) **damage** to premises or their contents thereof not belonging to or leased to or rented to the **insured** or otherwise in the **insured's** custody or control but temporarily occupied by the **insured** for **work away** therein but no indemnity is provided by this clause for **damage** to that part of the property on which the **insured** is working and which arises out of such **work away**.

## 11.12 Statutory defence costs including Health and Safety At Work, etc. Act 1974

11.12.1 The **insurer** agrees to indemnify the **insured** and at the request of the **insured**, any **other insured party**, in respect of **defence costs** incurred with the prior consent of the **insurer** in defending:

- a) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and / or
- b) any alleged breach of statutory duty under the Protection from Harassment Act 1997; and/or
- c) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;

provided that the prosecution or proceedings relate to:

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

11.12.2 The **insurer** will also indemnify the **insured** for:

- a) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with the prior consent of the **insurer**;
- b) prosecution costs awarded against the **insured**.

11.12.3 But the indemnity by this clause excludes and does not cover any amount:

- a) in respect of allegations provided by this clause (statutory defence costs) but not those relating to prosecution costs (clause c) below) or manslaughter, corporate manslaughter or corporate homicide (clause b) below), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
- b) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide including prosecution costs relating to this item b) (manslaughter defence costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
- c) in respect of prosecution costs other than such costs relating to item b) above (prosecution costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings.

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

- a) Health and Safety at Work, etc. Act 1974, but only sections 2 to 8,
- b) Health and Safety at Work (Northern Ireland) Order 1978,
- c) The Trade Description Act 1968
- d) Part II of the Consumer Protection Act 1987
- e) Part II of the Food Safety Act 1990.
- f) Corporate Manslaughter Act 2007

## 11.13 Waiver of subrogation

In respect of contracts or agreements which impose upon the **insured** conditions waiving the rights of the **insured** to recover from any other party, the **insurer** agrees to the extent required by such contract or agreement to waive any rights of subrogation to which it might otherwise have been entitled in such circumstances in respect of any payments which it may make under this **policy**.

Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent.

For the purpose of this clause, subrogation means the right of the **insurer** who has granted indemnity to take over any recovery rights the **insured** may have against third parties liable for the same loss.

## 12 Conditions precedent to Property owners', Products and Pollution liability

The due observance and fulfilment of the provisions of this clause is a condition precedent to the **insurer's** liability for any claim under this **policy**. The 'Observance' clause sets out the consequences of a failure to comply with conditions precedent or other conditions of this **policy**.

### 12.1 Bona fide subcontractors insurance check

It is a condition precedent to the **insurer's** liability under this insurance that whenever work is undertaken on behalf of the **insured** by bona fide subcontractors, the **insured** will establish and maintain an administrative procedure for obtaining evidence that bona fide subcontractors effect public liability insurance that:

- 12.1.1 covers the work to be undertaken by the bona fide subcontractor;
- 12.1.2 is subject to a **limit of indemnity** of not less than GBP5,000,000;
- 12.1.3 includes an 'indemnity to principals' clause,  
and such evidence is revalidated every twelve (12) months throughout the duration of their contract with the **insured**.

## 13 Exclusions to Property owners', Products and Pollution liability

The **insured sections** - Property owners', Products and Pollution liability exclude and do not cover:

### 13.1 Advertising injury

any liability arising out of **advertising injury**.

### 13.2 Advice, design or plans provided for a fee

liability arising out of or from advice, design, plans, specifications, formulae, surveys or directions prepared or given by the **insured** or **other insured party** for a fee but this shall not exclude such liability arising in conjunction with **products** supplied.

### 13.3 Aircraft and watercraft

liability arising out of or from the ownership, possession or use of any aircraft or other aerial device or satellite, spacecraft or any watercraft other than:

- 13.3.1 motor barges not exceeding seventy five (75) ton capacity on inland waterways;
- 13.3.2 hand-propelled craft, sailing vessels and motor launches not exceeding fifteen (15) metres in length and only when operated in inland waterways;
- 13.3.3 watercraft not belonging to or chartered by the **insured** but used by it for business entertainment provided that;
  - a) such watercraft is primarily owned and operated as a river cruise vessel;
  - b) such watercraft is insured by the owner or charterer under a policy of marine insurance; and
  - c) the **insurer** will not indemnify the **insured** in respect of liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement.

### 13.4 Asbestos

liability arising from or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust or asbestos-containing materials.

### 13.5 Costs of recall or guarantee

expenditure, whether incurred by the **insured** or others, for the withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement of any **product** or part thereof (or any other product or part thereof of which the **insured's product** forms, or is intended to form, a part or ingredient) and/or financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement.

### 13.6 Data protection liabilities

liability which arises under the Data Protection Act 1998 ('DPA'), any subsequent amending legislation or the General Data Protection Regulation ('GDPR') other than as provided for by the 'Data Protection' extension clause.

### 13.7 Deliberate acts

- 13.7.1 damages or compensation, including claimant costs and any associated **defence costs**, which result from **personal injury, damage, denial of access** or nuisance either expected or intended by the **insured** or **other insured party** but this exclusion does not apply to **personal injury** resulting from the use of reasonable force to protect persons or property.

13.7.2 other **defence costs** incurred in proceedings other than in respect of manslaughter, corporate manslaughter or corporate homicide consequent upon any deliberate act or omission by or on behalf of the **insured** or **other insured party**, if the result of such act or omission could reasonably have been expected to constitute an offence under any legislation.

13.7.3 however this exclusion shall not apply to any individual person or company if the **personal injury, damage, denial of access** or nuisance is not expected or intended by that party.

### 13.8 Electronic data

liability arising from:

- a) loss, alteration or impairment of or damage to information and/or data in electronic form;
- b) malicious acts of any person carried out by electronic means;
- c) defamation or harassment carried out by electronic means;

but this exclusion shall not apply in respect of:

- a) liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded; or
- b) liability which arises under the Data Protection Act 1998, any subsequent amending legislation or the General Data Protection Regulation ('GDPR').

### 13.9 Employment practices dispute

13.9.1 liability which is capable of being insured under a generally available Employment Practices Liability Insurance Policy and which arises out of:

- a) a dispute between an employer/prospective employer and **employee/prospective employee** referred or capable of being referred to an Employment Tribunal including such appeal courts or tribunals as are available from an Employment Tribunal as provided by the Employment Rights Act 1996; or
- b) a settlement or adjudication of or under the auspices of an Employment Tribunal or ACAS.

### 13.10 Excess

the amount of the **excess** as applicable and stated in the **schedule**.

### 13.11 Financial loss

liability for pure economic loss not consequent upon **bodily injury** or **damage** except for nuisance, libel, slander and the cover provided by the Data Protection extension clause.

### 13.12 Fines, penalties or multiplication of compensatory damages

any fines, penalties, punitive damages, exemplary damages, aggravated damages, treble damages or any other increase in damages resulting from the multiplication of compensatory damages.

### 13.13 Liability from employment

**bodily injury** caused to or sustained by any **employee** arising out of or in the course of employment by the **insured** in the **business**.

### 13.14 Limit of indemnity

liability in excess of the **limit of indemnity** stated in the **schedule** except for payment of **defence costs** as provided for by the Property owners', Products and Pollution liability.

### 13.15 Liquidated damages

any loss arising out of or from any liquidated damages clauses or penalty clauses or performance warranties in any contract or agreement which the **insured** or **other insured party** has entered into unless it is proven that, and then only to the extent that, liability would have attached in the absence of such clauses or warranties.

### 13.16 Statutory defence costs

liability for **defence costs** arising out of or in respect of any allegations of manslaughter, corporate manslaughter or corporate homicide except as stated as insured in the clause entitled 'Statutory defence costs including Health and Safety at Work, etc. Act 1974' under the Coverage extensions to Property owners', Products and Pollution liability **insured sections**.

### 13.17 North American jurisdiction

- 13.17.1 liability in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**;
- 13.17.2 but this exclusion shall not apply to visits to **North America** in the course of **business** to undertake non-manual work including but not limited to clerical work, sales and promotional activities and conference attendance providing that, in such circumstances:
- a) the **insurer** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
  - b) the **insurer** will not be liable to indemnify for any liability that arises under any agreement or contract that would not arise in the absence of any agreement or contract;
  - c) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from the ownership, maintenance, operation or use of any mechanically propelled vehicle or watercraft;
  - d) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from **pollution**;
  - e) **defence costs** are inclusive and form part of the **limit of indemnity**.

### 13.18 North American territory

- 13.18.1 liability in respect of **personal injury, damage, denial of access** or nuisance occurring within **North America** but this exclusion shall not apply to temporary non-manual visits to **North America** as specified in 'North American jurisdiction' above.
- 13.18.2 liability in respect of or arising from **pollution** occurring within **North America**.

### 13.19 Nuclear risks

- a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- b) any legal liability of whatsoever nature;
- c) any sum which the **insured** becomes 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 item c) above, attributable to **nuclear hazards**.

### 13.20 Overseas domiciled operations

the **insured's** subsidiary companies, branch offices or representatives with power of attorney that are domiciled outside of the **United Kingdom**.

### 13.21 Ownership or use of mechanically propelled vehicles

**personal injury, damage, denial of access** or nuisance arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** or any **other insured party** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by any expressly stated coverage extensions herein.

### **13.22 Property in the insured's care, custody and control**

**damage** to property owned, leased, hired or held in trust by the **insured** or under hire, purchase or on loan to the **insured** or held otherwise in the **insured's** care, custody or control except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by any expressly stated coverage extensions herein.

### **13.23 The product itself**

liability for **damage** to the **insured's product** or any part thereof arising from a defect or unsuitability thereof and economic loss or other loss of any kind arising therefrom.

### **13.24 War or terrorism**

**personal injury, damage, denial of access** or nuisance directly or indirectly caused by or contributed to by or arising from **war** or any act of **terrorism**.

### **13.25 Work away**

loss or liability for **bodily injury** or **damage** arising from **work away**.

## 14 Insured section – DAS Legal Expenses

This **insured section** is only insured if stated in the **schedule**.

The legal protection insurance cover provided by this **insured section** is underwritten by DAS Legal Expenses Insurance Company Limited.

The legal advice service is provided by DAS Law Limited and/or a **preferred law firm** on behalf of **DAS**.

To make sure that **you** get the most from **your DAS** cover, please take time to read this **insured section** which explains the insurance cover and additional services available to **you**. Please follow the procedures throughout the **insured section** and in particular those applying to **Employment disputes and compensation awards** cover.

This **insured section**, the General Exclusions, the General Conditions, the General Definitions and Interpretation, the **policy schedule** and any endorsement issued in connection with this **insured section** shall be read together as one document and describe the contract between **you** and **us**.

### 14.1 Reporting a claim

Report **your** claim

Call **us** on **0344 893 0859**, available 24 hours a day, 7 days a week

Have **your** scheme number ready and **we** will ask **you** about **your** claim

**Your** scheme number is **TS5/6953286**

**We** will assess the claim to check **your** claim is covered by this **insured section** and, if it is, **we** will send it to a lawyer who specialises in **your** type of claim.

The lawyer will assess **your** case and tell **you** how likely it is **you** will win.

If **you** are more likely than not to win, the lawyer will manage the case from start to finish.

Important information

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

Please note this is an overview of the **DAS** claims process for guidance purposes only. **DAS** claims handlers can answer any questions **you** may have when they receive **your** claim, alternatively **you** can visit [www.das.co.uk/legal-protection/how-to-claim](http://www.das.co.uk/legal-protection/how-to-claim)

### 14.2 The meaning of words applicable to this insured section

The following words have these meanings wherever they appear in this **insured section** in bold:

#### 14.2.1 appointed representative

The **preferred law firm**, law firm, tax consultancy, accountant or other suitably qualified person **we** appoint to act on the **insured person's** behalf.

#### 14.2.2 business

The business named as the **insured** in the **schedule** and declared to the **insurer** and covered by the **policy** to which this **insured section** attaches.

#### 14.2.3 costs and expenses

- a) All reasonable, proportionate and necessary costs chargeable by the **appointed representative** and agreed by the **insurer** in accordance with the **DAS Standard Terms of Appointment**.
- b) The costs incurred by opponents in civil cases if the **insured person** has been ordered to pay them, or the **insured person** pays them with the **insurer's** agreement.

#### 14.2.4 **countries covered**

- a) For insured incidents **Legal defence** (excluding **5 Statutory notice appeals** and **7 Disciplinary hearings**), and **Personal injury**  
The United Kingdom of Great Britain and Northern Ireland, the European Union, the Isle of Man, the Channel Islands, Albania, Andorra, Bosnia Herzegovina, Gibraltar, Iceland, Liechtenstein, Macedonia, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland and Turkey.
- b) For all other insured incidents  
The United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.

#### 14.2.5 **DAS Standard Terms of Appointment**

The terms and conditions (including the amount **DAS** will pay to an **appointed representative**) that apply to the relevant type of claim, which could include a conditional fee agreement (no win, no fee). Where a law firm is acting on **your** behalf the amount the **insurer** will pay is currently GBP 100 per hour. This amount may vary from time to time.

#### 14.2.6 **date of occurrence**

- a) For civil cases (other than as specified under **c**) to **e**) below), the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the **date of occurrence** is the date of the first of these events. (This is the date the event happened, which may be before the date **you** or an **insured person** first became aware of it.)
- b) For criminal cases, the date the **insured person** began, or is alleged to have begun, to break the law.
- c) For insured incident **Statutory licence appeal**, the date when **you** first became aware of the proposal by the relevant licensing or regulatory authority to suspend, alter the terms of, refuse to renew or cancel **your** licence, mandatory registration or British Standard Certificate of Registration.
- d) For insured incident **Tax protection**, the date when HM Revenue & Customs, or the relevant authority, first notifies **you** of its intention to carry out an enquiry.  
For **VAT** or **employer compliance disputes**, the date the dispute arises during the **period of insurance** following the issue of an assessment, written decision or notice of a civil penalty.
- e) For insured incident **Legal defence 5 Statutory notice appeals**, the date when the **insured person** is issued with the relevant notice and has the right to appeal.

#### 14.2.7 **employer compliance dispute**

A dispute with HM Revenue & Customs concerning **your** compliance with Pay As You Earn, Social Security, Construction Industry or IR35 legislation and regulations.

#### 14.2.8 **insured person**

- a) **You** and the directors, partners, managers, employees and any other individuals declared to the **insurer** by **you**.
- b) A person contracted to work for **you** who works for **you** on the same basis as **your** employees and performs that work under **your** supervision and direction.

#### 14.2.9 **period of insurance**

The period for which the **insurer** has agreed to cover the **insured person** and for which the **insurer** has accepted the premium.

#### 14.2.10 **preferred law firm**

A law firm, barrister or tax expert the **insurer** chooses to provide legal or other services. These specialists are chosen as they have the proven expertise to deal with the **insured person's** claim and must comply with the **insurer's** agreed service standard levels, which the **insurer** audits regularly. They are appointed according to the **DAS Standard Terms of Appointment**.

#### 14.2.11 **reasonable prospects**

- a) For civil cases, the prospects that the **insured person** will recover losses or damages or a reduction in tax or National Insurance liabilities (or obtain any other legal remedy that the **insurer** has agreed to, including an enforcement of judgment) or make a successful defence, must be at least 51%. A **preferred law firm** or tax consultancy on the **insurer's** behalf, will assess whether there are **reasonable prospects**.
- b) For criminal cases there is no requirement for there to be prospects of a successful outcome.
- c) For civil and criminal appeals the prospects of a successful outcome must be at least 51%.

#### 14.2.12 **tax enquiry**

A written notice of enquiry, issued by HM Revenue & Customs, to carry out an Income Tax or Corporation Tax compliance check which either:

- a) includes a request to examine any aspect of **your** books and records; or
- b) advises of a check of **your** whole tax return.

#### 14.2.13 **the premises**

The property or properties which are owned by **you** or are **your** responsibility and insured has declared to **us** and let under a tenancy agreement which is in writing, properly executed and containing an enforceable forfeiture clause.

#### 14.2.14 **VAT dispute**

A dispute with HM Revenue & Customs following the issue of an assessment, written decision or notice of a civil penalty relating to **your** VAT affairs.

#### 14.2.15 **we, us, our, DAS**

DAS Legal Expenses Insurance Company Limited.

#### 14.2.16 **you, your**

The **business** named as the **insured** in the **schedule** that has taken out this **policy**.

### 14.3 **DAS Legal Expenses insured section cover**

14.3.1 The **insurer** agrees to provide the insurance described in this **insured section** for **you** (or where specified, the **insured person**) in respect of any insured incident arising in connection with the **business**, in return for payment of the premium and subject to the terms, conditions, exclusions and limitations set out in this **insured section**, provided that:

- 1) **reasonable prospects** exist for the duration of the claim;
- 2) the **date of occurrence** of the insured incident is during the **period of insurance**; or
- 3) during the currency of a previous equivalent legal expenses insurance policy, provided that:
  - i) the previous legal expenses insurance policy required **you** to report claims during its currency;
  - ii) **you** could not have notified a claim previously as **you** could not have reasonably been aware of the insured incident;
  - iii) cover has been continuously maintained in force;
  - iv) any claim that should have been covered under a previously operative legal expenses insurance policy will not be covered by **us**; and
  - v) the available limit of indemnity shall be limited to the lesser of the sums payable under this or **your** previous policy;

- 4) any legal proceedings will be dealt with by a court, or other body which the **insurer** agrees to, within the **countries covered**; and
- 5) the insured incident happens within the **countries covered**.

#### 14.3.2 What the **insurer** will pay

The **insurer** will pay an **appointed representative**, on **your** behalf, **costs and expenses** incurred following an insured incident, and any compensation awards that the **insurer** agreed to, provided that:

- 1) the most the **insurer** will pay in respect of all claims resulting from one or more event arising at the same time or from the same originating cause, for **costs and expenses** and compensation awards claims, is GBP 250,000;
- 2) the most the **insurer** will pay for the total of all compensation awards under insured incident **Employment disputes and compensation awards Compensation awards** in any one **period of insurance** shall not exceed GBP 1,000,000;
- 3) the most the **insurer** will pay in **costs and expenses** is no more than the amount the **insurer** would have paid to a **preferred law firm** or tax consultancy. The amount the **insurer** will pay a law firm (where acting on **your** behalf) is currently GBP 100 per hour. This amount may vary from time to time;
- 4) in respect of an appeal or the defence of an appeal, **you** must tell the **insurer** as soon as possible and within the statutory time limits allowed that **you** want to appeal. Before the **insurer** pays the **costs and expenses** for appeals, the **insurer** must agree that **reasonable prospects** exist;
- 5) for an enforcement of judgment to recover money and interest due to **you** after a successful claim under this **insured section**, the **insurer** must agree that **reasonable prospects** exist;
- 6) where an award of damages is the only legal remedy to a dispute and the cost of pursuing legal action is likely to be more than any award of damages, the most the **insurer** will pay in **costs and expenses** is the value of the likely award; and
- 7) in respect of insured incident **Legal defence 6 Jury service and court attendance** the maximum the **insurer** will pay is the **insured person's** net salary or wages for the time that the **insured person** is attending court or tribunal, less any amount **you**, the court or tribunal pays.

#### 14.3.3 What the **insurer** will not pay:

- 1) In the event of a claim, if **you** decide not to use the services of a **preferred law firm** or tax consultancy, **you** will be responsible for any costs that fall outside the **DAS Standard Terms of Appointment** and these will not be paid by the **insurer**.
- 2) If **you** are registered for VAT the **insurer** will not pay the VAT element of any **costs and expenses**.
- 3) The first GBP 500 of any contract dispute claim where the amount in dispute exceeds GBP 5,000 (including VAT). If **you** are using a **preferred law firm**, **you** will be asked to pay this within 21 days of **your** claim having been assessed as having reasonable prospects. If **you** are using **your** own law firm, this will be within 21 days of their appointment (following confirmation **your** claim has reasonable prospects). If **you** do not pay this amount the cover for **your** claim could be withdrawn.

### 14.4 Insured Incidents

#### Employment disputes and compensation awards

##### 14.4.1 Employment disputes

##### 14.4.1.1 The **insurer** will pay **costs and expenses** to defend **your** legal rights:

- a) before the issue of legal proceedings in a court or tribunal:
  - i) following the dismissal of an employee; or

- ii) where an employee or ex-employee has contacted ACAS ('Advisory, Conciliation and Arbitration Service') to commence the Early Conciliation procedure; or
- b) in unfair dismissal disputes under the ACAS Arbitration Scheme; or
- c) in legal proceedings in respect of any dispute relating to:
  - i) a contract of employment with **you**; or
  - ii) an alleged breach of the statutory rights of an employee, ex-employee or prospective employee under employment legislation.

14.4.1.2 The **insurer** will not pay any claim relating to:

- 1) unless equivalent legal expenses insurance was continuously in force before:
  - a) any dispute where the originating cause of action arises within the first 90 days of the start of this **insured section**;
  - b) any dispute with an employee who was subject to a written or oral warning (formal or informal) within 180 days immediately preceding the inception date of this **insured section** if the **date of occurrence** was within the first 180 days of the start of this **insured section** and the dispute relates directly to the same matter(s) which gave rise to that warning;
  - c) any notice of redundancy or alleged redundancy or unfair selection for redundancy which occurs within the first 180 days of the start of this **insured section**;
- 2) employee internal disciplinary or grievance procedures;
- 3) damages for personal injury;
- 4) Transfer of Undertakings Regulations (TUPE) or the Transfer of Employment (Pension Protection) Regulations;
- 5) pursuing **your** legal rights.

#### 14.4.2 Compensation awards

14.4.2.1 In respect of a claim the **insurer** has accepted under insured incident **Employment disputes** the **insurer** will pay:

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

Provided that:

- i) in cases relating to performance and/or conduct, **you** have throughout the employment dispute either:
  - a) followed the ACAS Code of Disciplinary and Grievance Procedures; or
  - b) followed equivalent codes of practice issued by the Labour Relations Agency in Northern Ireland; or
  - c) sought and followed advice from **DAS's** legal advice service (telephone **0344 893 0859**);
- ii) for an order of compensation following **your** breach of statutory duty under employment legislation **you** have at all times sought and followed advice from **DAS's** legal advice service since the date when **you** should have known about the employment dispute (telephone **0344 893 0859**);
- iii) for any compensation award for redundancy or alleged redundancy or unfair selection for redundancy, **you** have sought and followed advice from **DAS's** legal advice service before starting any redundancy process or procedure with employees (telephone **0344 893 0859**);
- iv) any sum of money in settlement of a dispute is awarded by a court, tribunal or through the ACAS Arbitration Scheme, under a judgment made after full argument and otherwise than by default or is payable under settlement approved in writing in advance by the **insurer**.

Please note that the total amount payable by the **insurer** for all compensation awards and sums of money in settlement of a dispute, in aggregate and in any one **period of insurance** is GBP 1,000,000.

14.4.2.2 The **insurer** will not pay any claim relating to:

- 1) any compensation award relating to the following:
  - trade union activities, trade union membership or non-membership;
  - pregnancy or maternity rights, paternity, parental or adoption rights;
  - health and safety related dismissals brought under section 44 of the Employment Rights Act 1996;
  - statutory rights in relation to trustees of occupational pension schemes;
- 2) any award relating to non-payment of money due under a contract;
- 3) any award ordered because **you** have failed to provide relevant records to employees under National Minimum Wage legislation;
- 4) a compensation award or increase in a compensation award relating to failure to comply with a current or previous recommendation made by a tribunal;
- 5) a settlement agreed and payable following conciliation under the ACAS Early Conciliation procedure.

#### 14.4.3 Employee civil legal defence

The **insurer** will pay **costs and expenses** to defend the **insured person's** (other than **your**) legal rights if:

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

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

#### 14.4.4 Service occupancy

The **insurer** will pay **costs and expenses** to recover possession of premises owned by **you** or for which **you** are responsible from your employee or ex-employee.

The **insurer** will not pay:

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

#### 14.4.5 Employment restrictive covenants

The **insurer** will pay **costs and expenses** to pursue a civil action against an employee or ex-employee where they are in breach or are about to be in breach of a covenant which restricts them:

- a) from providing services to or soliciting **your** customers; or
- b) enticing other employees to leave **your** employment.

Provided that:

- i) the restrictive covenant(s) is expressly incorporated within the employee's or ex-employee's contract of employment with **you**; and
- ii) the employee or ex-employee has signed their contract of employment; and
- iii) the restrictive covenant does not exceed 12 months; and
- iv) **you** have not breached the employee's or ex-employee's contract of employment.

14.4.5.2 The **insurer** will not pay a claim relating to:

- 1) any dispute where the **date of occurrence** arises within the first 90 days of the start of this **insured section**, unless equivalent legal expenses insurance was in force immediately before;
- 2) any claim relating to a restrictive covenant applying to an employee or ex-employee transferred to the **business** under the Transfer of Undertakings Regulations (TUPE);
- 3) defending **your** legal rights other than the defence of a counter-claim that is an insured incident under this **insured section**.

#### 14.4.6 Legal defence

- 14.4.6.1 The **insurer** will pay **costs and expenses** to defend the **insured person's** legal rights for each of the following sections of **Legal defence** cover 1-7:

(provided that for each of the following sections of **Legal defence** cover **1-7** you request the **insurer** to provide cover for the **insured person**.)

##### 1. Criminal pre-proceedings cover

prior to the issue of legal proceedings, when dealing with the Police, Health and Safety Executive and/or Local Authority Health and Safety Enforcement Officer where it is alleged that the **insured person** has or may have committed a criminal offence.

Provided that:

for claims relating to the Health and Safety at Work etc. Act 1974 the **countries covered** shall be any place where the Act applies.

Please note the **insurer** will only cover criminal investigations and/or prosecutions which arise in direct connection with the activities of the **business** shown in the **policy schedule**. Please see **DAS Legal Expenses insured section cover 14.3**.

The **insurer** will not pay a claim relating to:

- 1) any criminal investigation or enquiry by, with or on behalf of HM Revenue & Customs;
- 2) investigations due to alleged infringement of road traffic laws or regulations in connection with the ownership, driving or use of a motor vehicle.

##### 2. Criminal prosecution defence

following an event which leads to the **insured person** being prosecuted in a court of criminal jurisdiction.

Provided that:

for claims relating to the Health and Safety at Work etc. Act 1974 the **countries covered** shall be any place where the Act applies.

Please note the **insurer** will only cover criminal investigations and/or prosecutions which arise in direct connection with the activities of the **business** shown in the **policy schedule**. Please see **DAS Legal Expenses insured section cover 14.3**.

The **insurer** will not pay a claim relating to:

- 1) prosecution due to alleged infringement of road traffic laws or regulations in connection with the ownership, driving or use of a motor vehicle.

##### 3. Data protection

if civil action is taken against the **insured person** for compensation under data protection legislation, when handling personal data in their capacity as a data controller and/or a data processor by:

- a) an individual. The **insurer** will also pay any compensation award in respect of such a claim;
- b) a data controller and/or data processor, which arises out of or relates to a claim made by an individual for compensation against that data controller and/or data processor. Please note the **insurer** will not pay any compensation award in respect of such a claim.

Provided that:

in respect of **3 a)** any sum of money in settlement of a dispute is awarded by a court under a judgment made after full argument and otherwise than by consent or default or is payable under settlement approved in advance by the **insurer**.

Please note the **insurer** will not cover the cost of fines imposed by the Information Commissioner, or any other regulatory and/or criminal body. Please see **Exclusions applicable to DAS Legal Expenses insured section 14.5.1.3**.

The **insurer** will not pay any claim relating to:

- 1) the loss, alteration, corruption or distortion of, or damage to stored personal data; or
- 2) a reduction in the functionality, availability, or operation of stored personal data resulting from hacking (unauthorised access), malicious or negligent transfer (electronic or otherwise) of a computer program that contains any malicious or damaging code, computer virus or similar mechanism.

#### 4. Wrongful arrest

if civil action is taken against the **insured person** for wrongful arrest in respect of an accusation of theft alleged to have been carried out during the **period of insurance**.

#### 5. Statutory notice appeals

in an appeal against the imposition or terms of any statutory notice issued under legislation affecting **your business**.

The **insurer** will not pay any claim relating to:

- 1) an appeal against the imposition or terms of any statutory notice issued in connection with **your** licence, mandatory registration or British Standard Certificate of Registration;
- 2) a statutory notice issued by an **insured person's** regulatory or governing body.

#### 6. Jury service and court attendance

an **insured person's** absence from work:

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

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

The **insurer** will reimburse **you** for net salary or wages that **you** have paid the **insured person** for that time, less any amount they have been paid by or can recover from the court or tribunal.

The **insurer** will not pay:

- 1) any claim if **you** or the **insured person** are unable to prove the loss.

## 7. Disciplinary hearings

If an event results in a disciplinary case brought against the **insured person** by the relevant authority.

### 14.4.7 Statutory licence appeal

14.4.7.1 The **insurer** will pay **costs and expenses** for an appeal 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.

14.4.7.2 The **insurer** will not pay a claim relating to:

- 1) the original application or renewal application of a statutory licence, mandatory registration or British Standard Certificate of Registration;
- 2) the ownership, driving or use of a motor vehicle.

### 14.4.8 Contract disputes

14.4.8.1 The **insurer** will pay **costs and expenses** for a contractual dispute arising from an agreement or an 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:

- i) the amount in dispute exceeds GBP 500 (inclusive of VAT);
- ii) if the amount in dispute exceeds GBP 5,000 (inclusive of VAT), **you** must pay the first GBP 500 of any claim. If **you** are using a **preferred law firm**, **you** will be asked to pay this within 21 days of **your** claim having been assessed as having **reasonable prospects**. If **you** are using **your** own law firm, this will be within 21 days of their appointment (following confirmation **your** claim has **reasonable prospects**). If **you** do not pay this amount the cover for **your** claim could be withdrawn;
- iii) if the amount in dispute is payable in instalments, the instalments due and payable at the time of making the claim exceed GBP 500 (inclusive of VAT);
- iv) if the dispute relates to money owed to **you**, a claim under this **insured section** is made within 90 days of the money becoming due and payable.

14.4.8.2 The **insurer** will not pay any claim relating to:

- 1) a dispute arising from an agreement entered into prior to the start of this **insured section** if the **date of occurrence** is within the first 90 days of the start of this **insured section**, unless equivalent legal expenses insurance was in force immediately before;
- 2) a) a dispute relating to an insurance policy, other than when **your** insurer refuses **your** claim;
- b) the sale, purchase, terms of a lease, licence, or tenancy of land or buildings. However, the **insurer** will cover a dispute with a professional adviser in connection with these matters;
- c) a loan, mortgage, pension, guarantee or any other financial product. However, the **insurer** will cover a dispute with a professional adviser in connection with these matters;

- d) 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;
- 3) a dispute with an employee or ex-employee which arises out of, or relates to, a contract of employment with **you**. (Please refer to insured incident **Employment disputes and compensation awards**);
- 4) a dispute which arises out of the:
  - a) sale or provision of computer hardware, software, systems or services; or
  - b) the purchase or hire of computer hardware, software, systems or services tailored by a supplier to **your** own specification;
- 5) the recovery of money and interest due from another party, other than disputes where the other party indicates that a defence exists;
- 6) a dispute arising from a breach or alleged breach of professional duty by an **insured person**.

#### 14.4.9 Debt recovery

14.4.9.1 The **insurer** will pay **costs and expenses** for a dispute relating to the recovery of money and interest due from the sale or provision of goods or services, including enforcement of judgments.

Provided that:

- i) the debt exceeds GBP 500 (inclusive of VAT);
- ii) a claim is made within 90 days of the money becoming due and payable;
- iii) the **insurer** has the right to select the method of enforcement, or to forego enforcing judgment if the **insurer** is not satisfied that there are or will be sufficient assets available to satisfy judgment.

14.4.9.2 The **insurer** will not pay any claim relating to:

- 1) any debt arising from an agreement entered into prior to the start of this **insured section** if the debt is due within the first 90 days of the start of this **insured section** unless equivalent legal expenses insurance was in force immediately before the start of this **insured section**;
- 2) a) the settlement payable under an insurance policy;
- b) the sale, purchase, terms of a lease, licence, or tenancy of land or buildings;
- c) a loan, mortgage, pension, guarantee or any other financial product. However, the **insurer** will cover a dispute with a professional adviser in connection with these matters;
- d) 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;
- 3) a dispute which arises out of the supply, hire, sale or provision of computer hardware, software, systems or services;
- 4) the recovery of money and interest due from another party where the other party indicates that a defence exists;
- 5) any dispute which arises from debts **you** have purchased from a third party.

#### 14.4.10 Property protection

14.4.10.1 The **insurer** will pay **costs and expenses** for a civil dispute relating to physical property which is owned by **you** or is **your** responsibility following:

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

Please note that **you** must have, or there must be reasonable prospects of establishing **you** have, the legal ownership or right to the physical property that is the subject of the dispute.

14.4.10.2 The **insurer** will not pay any claim relating to

- 1) a contract **you** have entered into (please refer to insured incident **Contract disputes**);
- 2) physical property which is in transit or which is lent or hired out;
- 3) goods at premises other than those occupied by **you** unless the goods are at the premises for the purpose of installations or use in work to be carried out by **you**;
- 4) mining subsidence;
- 5) defending **your** legal rights but the **insurer** will cover defending a counter-claim that is an insured incident under this **insured section**;
- 6) a motor vehicle owned or used by, or hired or leased to an **insured person** other than damage to motor vehicles where **you** are in the business of selling motor vehicles;
- 7) the enforcement of a covenant by or against **you**.

#### 14.4.11 Personal injury

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

14.4.11.2 The **insurer** will not pay a claim relating to:

- 1) any illness or bodily injury that happens gradually;
- 2) psychological injury or mental illness unless the condition follows a specific or sudden accident that has caused physical bodily injury;
- 3) defending an **insured person's** or their family members' legal rights other than in defending a counter-claim;
- 4) clinical negligence.

#### 14.4.12 Tax protection

14.4.12.1 The **insurer** will pay **costs and expenses** for:

- a) A **tax enquiry**
- b) An **employer compliance dispute**
- c) A **VAT dispute**.

Provided that:

**you** have taken reasonable care to ensure that all returns are complete and correct and are submitted within the statutory time limits allowed.

Please note the **insurer** will only cover tax claims which arise in direct connection with the activities of the **business** shown in the **policy schedule**. Please see **DAS Legal Expenses insured section cover 14.3**.

14.4.12.2 The **insurer** will not pay a claim relating to:

- 1) a tax avoidance scheme;
- 2) any failure to register for Value Added Tax or Pay As You Earn;
- 3) any investigation or enquiries by, with or on behalf of HM Revenue & Customs Special Investigations Section, Special Civil Investigations, Criminal Investigations Unit, Criminal Taxes Unit, under Public Notice 160 or by the Revenue & Customs Prosecution Office;
- 4) any claim relating to import or excise duties and import VAT;
- 5) any investigation or enquiry by HM Revenue & Customs into alleged dishonesty or alleged criminal offences.

#### 14.4.13 Commercial and residential leased or let property

**14.4.13.1** We will pay **costs and expenses** to pursue **your** legal rights:

- a) in a dispute with a tenant arising from a breach or alleged breach of the tenancy agreement which relates to the use or maintenance of **the premises**, excluding repossession, recovery of money and dilapidations; or
- b) to obtain possession of **the premises**, provided that, where appropriate, all statutory and contractual notices have been correctly served by **you** on the tenant; or
- c) to recover money and interest due from a lease, licence or tenancy of **the premises**, including enforcement of judgments, provided that:
  - i) the amount in dispute exceeds GBP 250 (inclusive of VAT) and a claim is made within 90 days of the money becoming due and payable or, if it is rent that is owed, it must have been overdue for at least one (1) calendar month;
  - ii) if **you** accept payment (or part payment) of any rent arrears from the tenant, **you** must provide proof **you** have warned the tenant this does not prevent **you** taking further action against them to recover monies owed;
  - iii) where the tenant is a limited company, **you** must have sought and followed advice from the **appointed representative** before accepting payment of rent arrears;
  - iv) the other party does not intimate that a defence exists.
- d) in a dispute relating to dilapidations to **the premises**, provided that:
  - i) the amount in dispute exceeds GBP 1,000;
  - ii) prior to the tenancy beginning, a detailed inventory, which notes the condition of all items on the inventory is prepared by **you**;
  - iii) after the tenant has vacated **the premises**, a detailed Schedule of Dilapidations is prepared by **you**.
- e) in defending any allegation of nuisance arising from **the premises** used solely for residential purposes.
- f) to evict anyone who is not **your** tenant or ex-tenant from **the premises** and who has not got **your** permission to be there.

**14.4.13.2** We will not pay a claim:

- 1) unless equivalent legal expenses insurance was continuously in force immediately before, any dispute where the originating cause of action arises within 90 days of the start of this cover;
- 2) for a dispute arising from or relating to:
  - a) the negotiation, review or renewal of the lease or tenancy agreement;
  - b) any matter relating to service charges;
  - c) rent, tax or building regulations or decisions or compulsory purchase orders or restrictions or controls placed on **your** material property by any government or public or local authority;
  - d) any claim relating to registering rents, reviewing rents, buying the freehold of **the premises** or any matter that relates to rent tribunals, the leasehold valuation tribunal, land tribunals or rent assessment committees;
  - e) any planning application, review or decision;
  - f) mining subsidence;
- 3) relating to:
  - a) land or premises used for agricultural purposes;
  - b) any arbitration or Agricultural Land Tribunal hearing relating to any dispute arising out of a contract of tenancy or lease regulated by the 1986 Agricultural Holdings Act or 1995 Agricultural Tenancies Act or at hearings of the Scottish Land Court relating to disputes arising out of a contract of tenancy or lease regulated by the 1991 Agricultural Holdings (Scotland) Act or 2003 Agricultural Holdings (Scotland) Act under the terms of the tenancy or lease or as directed by statute.

## **14.5 Exclusions applicable to DAS Legal Expenses insured section**

14.5.1 The **insurer** will not pay for the following:

**14.5.1.1 Late reported claims**

Any claim reported to the **insurer** more than 180 days after the date the **insured person** should have known about the insured incident.

**14.5.1.2 Costs the insurer has not agreed**

**Costs and expenses** incurred before the **insurer's** express acceptance.

**14.5.1.3 Court awards and fines**

Fines, penalties, compensation or damages which the **insured person** is ordered to pay by a court or other authority, other than compensation awards covered under insured incidents **Employment disputes and compensation awards Compensation awards** and **Legal defence**.

**14.5.1.4 Legal action the insurer has not agreed**

Legal action an **insured person** takes which the **insurer** or the **appointed representative** has not agreed to, or where the **insured person** does anything that hinders the **insurer** or the **appointed representative**.

**14.5.1.5 Intellectual property rights**

Any claim relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.

**14.5.1.6 Wilful acts**

Any wilful act or omission of an **insured person** deliberately intended to cause a claim under this **policy**.

**14.5.1.7 Franchise or agency agreements**

Any claim relating to rights under a franchise or agency agreement entered into by **you**.

**14.5.1.8 A dispute with DAS**

Any claim under this **policy** for a dispute with the **insurer**. For disagreements with the **insurer** about the handling of a claim refer to **Conditions applicable to Legal Expenses insured section 14.6.8**.

**14.5.1.9 Shareholding or partnership disputes**

Any claim relating to a shareholding or partnership share in the **business**.

**14.5.1.10 Judicial review, coroner's inquest**

**Costs and expenses** arising from or relating to judicial review, coroner's inquest or fatal accident inquiry.

**14.5.1.11 Nuclear, war and terrorism risks**

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, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, military force or coup, or any other act of terrorism or alleged act of terrorism as defined by the Terrorism Act 2000;
- d) pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds.

**14.5.1.12 Bankruptcy**

Any claim where either at the start of, or during the course of a claim:

- a) **you** are declared bankrupt;
- b) **you** have filed a bankruptcy petition;

- c) **you** have filed a winding-up petition;
- d) **you** have made an arrangement with **your** creditors;
- e) **you** have entered into a deed of arrangement;
- f) **you** are in liquidation;
- g) part or all of **your** affairs or property are in the care or control of a receiver or administrator.

#### 14.5.1.13 Defamation

Any claim relating to written or verbal remarks that damage the **insured person's** reputation.

#### 14.5.1.14 Litigant in person

Any claim where an **insured person** is not represented by a law firm, barrister or tax expert.

## 14.6 Conditions applicable to DAS Legal Expenses insured section

### 14.6.1 Your representation

- a) On receiving a claim if representation is necessary the **insurer** will appoint a **preferred law firm** or tax consultancy as **your appointed representative** to deal with **your** claim. They will try to settle **your** claim by negotiation without having to go to court.
- b) If the appointed **preferred law firm** or tax consultancy cannot negotiate settlement of **your** claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest, then **you** may, if **you** prefer, choose a law firm or tax expert of **your** own choice to act as the **appointed representative**. The **insurer** will choose the **appointed representative** to represent **you** in any proceedings where the **insurer** is liable to pay a compensation award.
- c) If **you** choose a law firm as **your appointed representative** who is not a **preferred law firm** or tax consultancy, the **insurer** will give **your** choice of law firm the opportunity to act on the same terms as a **preferred law firm** or tax consultancy. However if they refuse to act on this basis, the most the **insurer** will pay is the amount the **insurer** would have paid if they had agreed to the **DAS Standard Terms of Appointment**. The amount the **insurer** will pay a law firm (where acting on **your** behalf) is currently GBP 100 per hour. This amount may vary from time to time.
- d) The **appointed representative** must co-operate with the **insurer** at all times and must keep the **insurer** up to date with the progress of the claim.

### 14.6.2 Your responsibilities

An **insured person** must:

- a) co-operate fully with the **insurer** and the **appointed representative**;
- b) give the **appointed representative** any instructions that the **insurer** asks them to.

### 14.6.3 Offers to settle a claim

- a) An **insured person** must tell the **insurer** if anyone offers to settle a claim and must not negotiate or agree to any settlement without the **insurer's** expressed consent.
- b) If an **insured person** does not accept a reasonable offer to settle a claim, the **insurer** will not pay further **costs and expenses**.
- c) The **insurer** may decide to pay an **insured person** the reasonable value of the claim that the **insured person** is claiming or is being claimed against them instead of starting or continuing legal action. In these circumstances an **insured person** must allow the **insurer** to take over and pursue or settle a claim in their name. An **insured person** must allow the **insurer** to pursue at the **insurer's** own expense and for the **insurer's** benefit, any claim for compensation against any other person and an **insured person** must give the **insurer** all the information and help the **insurer** needs to do so.

### 14.6.4 Assessing and recovering costs

- a) An **insured person** must instruct the **appointed representative** to have **costs and expenses** taxed, assessed or audited if the **insurer** asks for this.
- b) An **insured person** must take every step to recover **costs and expenses** and court attendance and jury service expenses that the **insurer** has to pay and must pay the **insurer** any amounts that are recovered.

#### 14.6.5 Cancelling an appointed representative's appointment

If the **appointed representative** refuses to continue acting for an **insured person** with good reason or if an **insured person** dismisses the **appointed representative** without good reason the cover the **insurer** provides will end at once unless the **insurer** agrees to appoint another **appointed representative**.

#### 14.6.6 Withdrawing cover

- a) If an **insured person** settles a claim or withdraws their claim without the **insurer's** agreement or does not give suitable instructions to the **appointed representative** the **insurer** can withdraw cover and will be entitled to reclaim any **costs and expenses** the **insurer** has paid.
- b) If during the course of a claim **reasonable prospects** no longer exist the cover the **insurer** provides will end at once. The **insurer** will pay any **costs and expenses** and compensation awards the **insurer** has agreed to up to the date cover was withdrawn.

#### 14.6.7 Expert opinion

If there is a disagreement between an **insured person** and the **insurer** on the merits of the claim or proceedings, or on a legal principle, the **insurer** may suggest the **insured person** obtains at their own expense an opinion on the matter from an independent and appropriate expert. The expert must be approved in advance by the **insurer** and the cost expressly agreed in writing between the **insured person** and the **insurer**. Subject to this the **insurer** will pay the cost of getting the opinion if the expert's opinion indicates that it is more likely than not that the **insured person** will recover damages (or obtain any other legal remedy that the **insurer** has agreed to) or make a successful defence. This does not affect the **insured person's** rights under condition 14.6.8 of the **Conditions applicable to DAS Legal Expenses insured section**.

#### 14.6.8 Arbitration

If there is a disagreement between an **insured person** and the **insurer** about the handling of a claim and it is not resolved through the **insurer's** internal complaints procedure the **insured person** can contact the Financial Ombudsman Service for help. This is a free arbitration service for eligible consumers, small businesses, charities and trusts. (Details available from [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk))

If the dispute is not covered by the Financial Ombudsman Service there is a separate arbitration process available. The arbitrator will be a barrister, solicitor or other suitably qualified person chosen jointly by the **insured person** and the **insurer**. If there is a disagreement over the choice of arbitrator, the **insurer** will ask the Chartered Institute of Arbitrators to decide. The arbitrator will decide who will pay the costs of the arbitration. For example, costs may be split between the **insured person** and the **insurer** or may be paid by either the **insured person** or the **insurer**.

#### 14.6.9 Keeping to the insured section terms

An **insured person** must:

- a) keep to the terms and conditions of this **insured section**;
- b) take reasonable steps to avoid and prevent claims;
- c) take reasonable steps to avoid incurring unnecessary costs;

- d) send everything the **insurer** asks for in writing; and
- e) report to the **insurer** full and factual details of any claim as soon as possible and give the **insurer** any information the **insurer** needs.

#### 14.6.10 Cancelling this insured section

**You** can cancel this **insured section** by telling the **insurer** at any time as long as **you** tell the **insurer** at least 14 days beforehand.

The **insurer** can cancel this **insured section** at any time as long as the **insurer** tells **you** at least 14 days beforehand.

Subject to the terms of business between **you** and the person who sold **you** this **policy**, **you** may be entitled to a partial refund of the premium.

It is important to note that charges may apply to any refund subject to the individual terms of business between **you** and the person who sold **you** this **policy**. Please contact them directly for full details of charges.

#### 14.6.11 Fraudulent claims

The **insurer** will at **our** discretion void this **insured section** (make it invalid) from the date of claim or alleged claim and/or the **insurer** will not pay the claim if:

- a) a claim the **insured person** has made to obtain benefit under this **insured section** is fraudulent or intentionally exaggerated; or
- b) a false declaration or statement is made in support of a claim.

#### 14.6.12 Claims under this insured section by a third party

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

#### 14.6.13 Other insurances

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

#### 14.6.14 Law that applies

This **insured section** is governed by the law that applies in the part of the United Kingdom, Channel Islands or Isle of Man where **your business** is registered. Otherwise the law of England and Wales applies.

All Acts of Parliament mentioned in this **insured section** include equivalent laws in Scotland, Northern Ireland, the Isle of Man and the Channel Islands as appropriate.

### 14.7 Data protection

To comply with data protection regulations **DAS** is committed to processing personal information fairly and transparently. This **insured section** is designed to provide a brief understanding of how **DAS** collects and uses this information.

**DAS** may collect personal details including name, address, date of birth, email address and on occasion dependent on the type of cover in place sensitive information such as medical records. This is for the purpose of managing the products and services in place and this may include underwriting, claims handling and providing legal advice. **DAS** will only obtain

personal information either directly from **you**, the third party dealing with **your** claim or from the authorised partner who sold this **insured section**.

**DAS** is part of DAS Legal Expenses Insurance Company Limited which is part of DAS UK Holdings Limited (DAS UK Group).

The uses of personal data by **DAS** and members of the DAS UK Group are covered by **DAS's** individual company registrations with the Information Commissioner's Office. **DAS** has a Data Protection Officer who can be contacted at [dataprotection@das.co.uk](mailto:dataprotection@das.co.uk)

**DAS** may need to send personal information to other parties, such as lawyers or other experts, the court, insurance intermediaries, insurance companies, appointed service providers, specialist agencies or other members of the DAS UK Group so they may contact **you** for **your** feedback. If the **insured section** includes legal advice **DAS** may have to send the personal information outside of the European Economic Area (EEA) in order to give legal advice on non-European Union law. Dependent on the type of cover in place, the personal information may also be sent outside the EEA so the service provider can administer the claim. **DAS** will take all steps reasonably necessary to ensure the personal data is treated securely and in accordance with this Privacy Notice. Any transfer outside of the EEA will be encrypted using SSL technology.

**DAS** will not disclose the personal data to any other person or organisation unless **DAS** is required to by its legal and regulatory obligations. For example, **DAS** may use and share the personal data with other organisations and public bodies, including the police and anti-fraud organisations, for the prevention and detection of crime, including fraud and financial sanctions. If false or inaccurate information is provided and fraud is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering. Further details explaining how the information held by fraud prevention agencies may be used can be obtained by writing to, or telephoning **DAS**. A copy is also accessible and can be downloaded via **DAS's** website.

It is necessary for **DAS** to use the personal information to perform **our** obligations in accordance with any contract that **DAS** may have with the person taking out this **insured section**. It is also in **DAS's** legitimate interest to use the personal information for the provision of services in relation to any contract that **DAS** may have with the person taking out this **insured section**.

**DAS** will retain personal data for 7 years. **DAS** will only retain and use the personal data thereafter as necessary to comply with its legal obligations, resolve disputes, and enforce its agreements. If **you** no longer want **DAS** to use the personal data, please contact **DAS** at [dataprotection@das.co.uk](mailto:dataprotection@das.co.uk)

The following rights are available in relation to the handling of personal data:

the right to access personal data held

the right to have inaccuracies corrected for personal data held

the right to have personal data held erased

the right to object to direct marketing being conducted based upon personal data held

the right to restrict the processing for personal data held, including automated decision-making

the right to data portability for personal data held.

Any requests, questions or objections should be made in writing to the Data Protection Officer | DAS Legal Expenses Insurance Company Limited | DAS House | Quay Side | Temple Back | Bristol | BS1 6NH

Or via email: [dataprotection@das.co.uk](mailto:dataprotection@das.co.uk)

If there is any dissatisfaction with the way in which personal data has been processed, the Data Protection Officer can be contacted in the first instance using the details above.

If you remain dissatisfied, the Information Commissioner's Office can be approached directly for a decision. The Information Commissioner can be contacted at:  
Information Commissioner's Office | Wycliffe House | Water Lane | Wilmslow | Cheshire | SK9 5AF  
[www.ico.org.uk](http://www.ico.org.uk)

## 14.8 How to make a complaint

**DAS** always aims to give the **insured person** a high quality service. If the **insured person** thinks **DAS** has let them down, they can contact **DAS** by:

phoning **0344 893 9013**

emailing [customerrelations@das.co.uk](mailto:customerrelations@das.co.uk)

writing to the Customer Relations Department | DAS Legal Expenses Insurance Company Limited | DAS House | Quay Side | Temple Back | Bristol | BS1 6NH

completing **our** online complaint form at [www.das.co.uk/about-das/complaints](http://www.das.co.uk/about-das/complaints)

Further details of **DAS's** internal complaint-handling procedures are available on request.

If the **insured person** is not happy with the complaint outcome or if **DAS** has been unable to respond to your complaint within 8 weeks, you may be able to contact the Financial Ombudsman Service for help. This is a free arbitration service for eligible complaints. (Details available from [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk))

The **insured person** can contact them by:

phoning **0800 023 4567** (free from mobile phones and landlines) or **0300 123 9123**

emailing [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

writing to The Financial Ombudsman Service | Exchange Tower | London | E14 9SR

Further information is available on their website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

Using this service does not affect the **insured person's** right to take legal action.

The Financial Ombudsman's role is to assess **DAS's** handling of a claim in light of the **policy** terms. It is not to assess the quality of legal advice. If the **insured person** is unhappy with the service provided by an **appointed representative** the relevant complaint-handling procedure is available on request.

## 14.9 About DAS

DAS Head and Registered Office:

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

Registered in England and Wales | Company Number 103274 | Website: [www.das.co.uk](http://www.das.co.uk)

DAS Legal Expenses Insurance Company Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority (FRN202106) and the Prudential Regulation Authority.

### Financial Services Compensation Scheme

**DAS** is covered by the Financial Services Compensation Scheme (FSCS). Compensation from the scheme may be claimed if **DAS** cannot meet its obligations. This will be dependent on the type of business and the circumstances of the claim. More information on the compensation scheme arrangements can be found on the FSCS website, [www.fscs.org.uk](http://www.fscs.org.uk)

DAS Law Limited Head and Registered Office:

DAS Law Limited | North Quay | Temple Back | Bristol | BS1 6FL

Registered in England and Wales | Company Number 5417859 | Website: [www.daslaw.co.uk](http://www.daslaw.co.uk)

DAS Law Limited is authorised and regulated by the Solicitors Regulation Authority (registered number 423113).

## 15 DAS Helplines, DAS Employment Manual and DASbusinesslaw

**You** can contact the **DAS** UK-based call centre 24 hours a day, seven days a week during the period of insurance. However, **DAS** may need to arrange to call **you** back depending on the enquiry. To help **DAS** check and improve their service standards they may record all calls. When phoning, please quote **your** scheme number **TS5/6953286** and the name of the insurance provider who sold **you** the policy.

### Legal advice

Call **0344 893 0859** for legal advice by telephone on any commercial legal problem affecting **your** business under the laws of the United Kingdom of Great Britain and Northern Ireland, any European Union country, the Isle of Man, the Channel Islands, Switzerland and Norway.

Wherever possible the Legal Advice helpline aims to provide immediate advice from a qualified legal adviser. However, if this is not possible they will arrange to call **you** back at a time to suit **you**.

Advice on the laws of England and Wales can be provided 24 hours a day, 365 days a year. Beyond this jurisdiction, or for very specialist legal matters, **DAS** will refer **you** to one of their specialist advisers.

Specialist advice is provided 9am-5pm, Monday to Friday, excluding public and bank holidays. If calls are received outside of these times, a specialist advisor will arrange to call **you** back.

### Tax advice

Call **0344 893 0859** for tax advice on any tax matters affecting the business, under UK law.

The tax advice service is provided 9am-5pm, Monday to Friday, excluding public and bank holidays. If calls are made outside these times, a tax advisor will arrange to call **you** back.

### Counselling service

Call **0344 893 9012** for confidential counselling. **DAS** will provide the **insured person** (and any members of their immediate family who permanently live with them) with a confidential counselling service over the phone if they are aged 18 or over (or aged between 16 and 18 and in full-time employment). This includes, where appropriate, onward referral to relevant voluntary and/or professional services. Any costs arising from the use of these referral services will not be paid by **DAS** or QBE. The counselling service helpline is open 24 hours a day, seven days a week.

### Employment Manual Visit [www.dasinsurance.co.uk/employment-manual](http://www.dasinsurance.co.uk/employment-manual)

The DAS Employment Manual offers comprehensive, up to date guidance on employment law. To view it, please visit [www.dasinsurance.co.uk/employment-manual](http://www.dasinsurance.co.uk/employment-manual)

Contact DAS at [employmentmanual@das.co.uk](mailto:employmentmanual@das.co.uk) with **your** email address and quoting **your** scheme number **TS5/6953286** and DAS will contact **you** by email to inform **you** of future updates to the Employment Manual.

### DASbusinesslaw Visit [www.dasbusinesslaw.co.uk](http://www.dasbusinesslaw.co.uk)

Visit [www.dasbusinesslaw.co.uk](http://www.dasbusinesslaw.co.uk) to access the free online law guide and download legal documents to help your business.

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

Register using the voucher code **DAS472301** to gain access to a range of free documents.

The helplines are provided by **DAS**. If **you** have a complaint about the service or about the way **you** have been treated when using the helplines please contact **DAS**: by telephone on 0344 893 9013; or, by email at [customerrelations@das.co.uk](mailto:customerrelations@das.co.uk); or, write to DAS Customer Relations | DAS House | Quay Side | Temple Back | Bristol | BS1 6NH

DAS will not accept responsibility if the helpline services are unavailable for reasons it cannot control. In using these services **you** acknowledge all rights and obligations relating to the provision of these services rest with **DAS** and that **you** have no recourse to QBE.

## 16 Duties in the event of a claim or potential claim

### 16.1 Claim notification

**For** Insured sections Property, Loss of rent receivable, Failure of building services and Terrorism

- 16.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:
- a) within seven (7) days in respect of **damage** caused by the **insured peril** of riot;
  - b) as soon as practical but in any event within thirty (30) days of the event giving rise to any other loss or claim in respect of **damage** caused by any **insured peril** other than riot.

In respect of **damage** caused by theft or malicious persons the **insured** will give immediate notice to the police authority, and take all practical steps to discover any guilty person or persons and recover the property lost.

**For** Insured sections Employers' liability, Property owners', Products and Pollution liability plus coverage extensions

- 16.1.2 The **insured** will give notice in writing or by an agreed electronic medium to the **insurer**:
- a) as soon as practical but in any event within thirty (30) days after any accident, event or the coming into possession of actual knowledge of any **personal injury, damage, claim** or circumstance with full particulars thereof; or
  - b) immediately on but in any event within three (3) business days from:
    - i) receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that include alleged **personal injury**;
    - ii) coming into possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **personal injury**;
    - iii) receipt of any notice of intention to adjudicate, notice of adjudication, referral notice;
    - iv) the **insured's** actual knowledge of any **RIDDOR** incident involving any person;
    - v) the **insured's** actual knowledge of any death or **personal injury** to any person involving a stay in hospital in excess of three (3) business days;and which may be the subject of indemnity under this **policy**;
  - c) as soon as practical of any other circumstances that might reasonably be expected to give rise to a **claim**.
- 16.1.3 Notice shall include the reasons for the anticipation of a **claim**, with full particulars as to the circumstances, dates and persons involved. Any subsequent **claim** arising out of such circumstances shall be deemed to have been made during the **period of insurance**.

### 16.2 Claim notification - Insured section 14 (DAS Legal Expenses)

- 16.2.1 The **insured section** - DAS Legal Expenses includes its own claim terms and conditions which take precedence in the event of any conflict with this section.

- 16.2.2 Report your claim  
Call **DAS** on **0344 893 0859**, available 24 hours a day, 7 days a week  
Have **your** scheme number ready and they will ask you about your claim  
**Your** scheme number is **TS5/6953286**

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

**DAS** claims handlers can answer any questions **you** may have when they receive **your** claim, alternatively **you** can visit [www.das.co.uk/legal-protection/how-to-claim](http://www.das.co.uk/legal-protection/how-to-claim)

### 16.3 All insured sections

Such notice to the **insurer** must be given in writing or by an agreed electronic format to the claims notification address specified in the **schedule**.

### 16.4 Insured's duties

For each and every claim the **insured** and any person acting on behalf of the **insured** must:

- a) not admit responsibility, make an offer or promise or offer payment or indemnity without the written consent of the **insurer**;
- b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
- c) on the happening of any **damage** in consequence of which a claim is or may be made under **insured section** – loss of rent receivable, with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or check any interruption of or interference with the **business** or to avoid or diminish the loss;
- d) always act honestly;
- e) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;
- f) 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;
- g) not destroy evidence or supporting information or documentation without the **insurer's** 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**;
- h) comply with any reporting obligations provided for under the General Data Protection Regulation ('GDPR').

### 16.5 Claim Procedure

Unless stated otherwise, all claims will be handled and overseen by the **insurer** but day to day handling may be managed by a third party claim management company or loss adjusters. For each and every claim the **insured** and any person acting on behalf of the **insured** must:

- 16.5.1 within thirty (30) days after **damage** (or expiry of the **indemnity period** in the case of loss of rent receivable) or such further time as the **insurer** may in writing allow, at the **insured's** own expense, deliver to the **insurer** a claim in writing, containing as particular an account as may be reasonably practical of the several articles or portions of property **damaged** and the amount of the **damage** thereto respectively, having regard to their value at the time of the **damage**, together with any details of any other insurance on any **property insured** and 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;
- 16.5.2 prove, if it is alleged that by reason of an exclusion of riot, civil commotion, **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 if the **insured** does so prove, this will not in any way render the remainder of the exclusions invalid, inapplicable or unenforceable.

### 16.6 Insurer's rights

- 16.6.1 The **insurer's** preferred intention is to investigate any potential claim and to undertake the conduct of any proceedings in connection with such claims on behalf of the **insured**. It is one of the services offered and provided by this **policy**. However, there may be occasions, for example, in relation to potential proceedings in **North America**, when this is not appropriate.

- 16.6.2 Therefore, it is agreed that the **insurer** has the right not to, and shall be under no obligation to, investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims but will be free to leave the conduct of such proceedings wholly with the **insured**.
- 16.6.3 In such cases, the **insurer** will transfer the conduct of proceedings to the **insured** and will clearly set out the conditions as regards the payment of costs and the **insured's** freedom to commit the **insurer** to any settlement by compromise or otherwise. Provided that any settlement or compromise is made within these conditions, this **policy** will provide an indemnity as otherwise stated.
- 16.6.4 Further, the **insurer** may at any time pay the **limit of indemnity, limit of liability, sub-limit of liability or sum insured** (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 **insured section**) for payment of **defence costs** incurred prior to the date of payment.
- 16.6.5 On the happening of any event in respect of which a claim is or may be made under this **policy**, the **insurer** (and every person authorised by them) shall have the right, without thereby incurring any liability or diminishing their right to rely on any condition of this insurance, to enter the **premises** where the event has occurred, and to take and keep possession of any of the **property insured** (or require it to be delivered to them), and to deal with any salvage in a reasonable manner. No claim under this policy shall be payable unless the terms of this condition have been complied with. No property may be abandoned to the **insurer**, whether taken possession of by them or not.

This condition shall be evidence of permission from the **insured** to the **insurer** so to do. If the **insured** or anyone acting on behalf of the **insured** shall not comply with the requirements of the **insurers** or shall hinder or shall obstruct the **insurer** in doing any of the above mentioned acts then all benefit under this **policy** shall be forfeited. The **insured** shall not in any case be entitled to abandon any property to the **insurer** whether taken possession of by the **insurers** or not. Applicable to **insured sections** - Property, Loss of rent receivable, Failure of building services and Terrorism only.

## 16.7 Subrogation

- 16.7.1 Except as expressly provided by any 'Waiver of subrogation' clause, for each and every claim, the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit that may give rise to a claim under this insurance.
- 16.7.2 The **insured** or any other party insured by this **policy** will, at the request and expense of the **insurer**, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.
- 16.7.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.
- 16.7.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) who will have paid an amount over and above any payment hereunder will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 16.7.5 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.

## 17 General terms and conditions

### 17.1 Applicable law

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

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

### 17.2 Assignment

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

### 17.3 Basis of contract

Any reference to 'basis of the contract' in this **policy** or in the proposal form (if any) is of no effect.

### 17.4 Cancellation

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the policy with effect from the thirtieth (30<sup>th</sup>) 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 demand and subject to no claims having been notified under this **policy**, the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**.

Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

### 17.5 Contract (Rights of Third Parties) Act 1999

This insurance does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 or any amending or subsequent legislation by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party. However, this will not preclude rights enforceable under the Third Parties (Rights against Insurers) Act 2010.

### 17.6 Contribution

If at the time of any claim under **insured sections** Property, Loss of rent receivable, Failure of building services and Terrorism there will be any other insurance covering the same risk or any part thereof the **insurer** will not be liable for more than its rateable proportion. Nothing herein will be construed to make the insurance by this section subject to the terms, limitations, conditions and definitions of any other insurance except that if any other insurance will be subject to any condition of average, then the insurance provided by any **insured section** if not already subject to a condition of average will be subject to average in like manner.

### 17.7 Data Privacy Notice

Any personal data provided to the **insurer** 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 the **insured** may contact the **insurer's** 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, 30 Fenchurch Street, London EC3M 3BD.

## 17.8 Dispute resolution

All matters in dispute between the **insured**, any other party covered by this insurance and the **insurer** arising out of or in connection with the construction or formation of this insurance will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed, then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator and the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

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

If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take, the dispute will be referred by either party to courts, subject to the law and jurisdiction set down in the Applicable law clause above.

## 17.9 Duty of fair presentation

The **insured** 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 insurance.

## 17.10 Duty of fair presentation - remedies for breach – proposing for this insurance

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation then the **insurer's** remedies shall be as follows:

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

## 17.11 Duty of fair presentation - remedies for breach – variation

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation in relation to a variation of this **policy**, the **insurer's** remedies shall be as follows:

- a) if such breach is deliberate or reckless, the **insurer** may:

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

## 17.12 Employers' Liability (Compulsory Insurance) Act 1969

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

## 17.13 Exchange rate

In the event of a payment being made under this **policy** in any other currency than pounds sterling (GBP), the exchange rate applicable will be the rate of exchange published in the Financial Times at the date that settlement is agreed.

## 17.14 Fraudulent claims

- 1.1.1 If the **insured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **insurer**:
  - a) is not liable to pay the claim;
  - b) may recover any part of the claim already paid from the relevant **insured**; and
  - c) may by notice to the **insured** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **insurer** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.
- 1.1.2 These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

## 17.15 Inspection and audit

- 17.15.1 The **insurer**, or such representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations at any time. Neither the **insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **insured** or others to determine or warrant that such property or operations are safe.
- 17.15.2 The **insured's** books and records (in whatever form they are held) shall be open to inspection by authorised representatives of the **insurer** at any reasonable time during the existence of this **policy** or of any liability hereunder, insofar as they relate to the subject matter of this **policy**.

## 17.16 Late payment of claims

The **insurer** 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).

## 17.17 Material changes during the policy period

- 17.17.1 The **insured** must notify the **insurer** within thirty (30) days of any material change to the **insured**, its **business** or the risks insured if indemnity under this insurance is sought in relation to any such change.
- 17.17.2 The **insurer** shall not indemnify the **insured** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the **insurer** has provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

## 17.18 Minimisation of risk

The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing. Upon the happening of an insured event and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that insured event. Any failure by the **insured** to take such steps shall reduce or extinguish the **insurer's** liability to indemnify the **insured** under the **policy** to the extent that such failure has increased the claim under the **policy**.

## 17.19 Multiple deductibles or excesses

- 17.19.1 Where any **deductible** or **excess** is described as 'non ranking', then this amount is excluded from and forms no part of the indemnity provided by this insurance.
- 17.19.2 The **insurers** shall not be liable for the relevant **deductible** or **excess** specified in the **schedule** but if an insured event forms the subject of indemnity under more than one (1) **insured section** then the **deductible** or **excess** will be the highest applicable.

## 17.20 Non-Contribution

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

If any claim covered under this the **insured section** – DAS Legal Expenses is also covered by another policy or would have been covered if this **insured section** did not exist the **insurer** will only pay its share of the claim even if the other insurer refuses the claim.

## 17.21 Observance

- 17.21.1 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 the **insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.
- 17.21.2 Further, where an indemnity is provided to any other party, the **insured** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply provided always that the other party complies with the terms of 'Duties in the event of a claim or potential claim'.
- 17.21.3 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.
- 17.21.4 In the event of a breach of any condition precedent in the **policy** and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach and continue the **policy** on such terms as the **insurer** may determine and, if any payment on account of any such **claim** has already been made, the **insured** will repay forthwith all payments on account to the **insurer**.

## 17.22 Premium adjustment

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** will keep accurate records and declare such information as the **insurer** requires 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 the insured as the case may be but subject to any minimum premium that may apply. The **insurer** reserves the right to request that the **insured** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

## 17.23 Records

The **insurer** 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.

## 17.24 Recovery of benefits

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

## 17.25 Representation

Where more than one entity is designated as 'insured' the first named **insured** will act on behalf of all **insureds** and other parties covered under this **policy** with respect to the giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to any other party covered by this insurance.

## 17.26 Sanction limitation and exclusion

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

## **17.27 Severability**

- 17.27.1 The proposal shall be construed as a separate application for insurance under this **policy** by each **insured**. No statements in the proposal or knowledge possessed by any one (1) **insured** shall be imputed to any other **insured**.
- 17.27.2 For the purpose of determining the applicability of the **policy** exclusions and limitations, the act or knowledge of any one **insured** shall not be imputed to any other **insured**.

## **17.28 Subscribing insurer**

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

## **17.29 Tracing office database**

Where the **insurer** provides an indemnity under the Employers' Liability (Compulsory Insurance) Regulations 1998, the **insurer** is required by regulation to maintain a database of all the companies and subsidiary companies covered by such insurance. The **insurer** supports and will add details of all company names to the Employers' Liability Tracing Office database.

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

## 18 General definitions and interpretation

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

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

For **insured section**- Loss of rent receivable the words and expressions used in the **insured's** books and accounts will have the meaning attached to them herein. Any adjustments implemented in current cost accounting will be disregarded. Further to the extent that the **insured** is accountable to the tax authorities for value added tax, all terms in **insured section** – Loss of rent receivable will be exclusive of such tax.

Refer to 14.2 for the meaning of certain words used within the **insured section** – DAS Legal Expenses.

### 18.1 Act of Terrorism

In respect of **insured section** Terrorism, act of terrorism means acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government de jure or de facto.

### 18.2 Actual value

Actual value means the amount it would cost to repair or replace **property insured**, on the date of loss, with material of like kind and quality, with deduction for obsolescence and physical depreciation.

### 18.3 Advertising injury

Advertising injury means:

- 18.3.1 misappropriation of advertising ideas or style of doing business;
- 18.3.2 infringement of copyrighted advertising materials, titles or slogans; in the course of advertising the **insured's** goods, **products** or services.

### 18.4 Annual rent receivable

Annual rent receivable means the **rent receivable**, **trend adjusted**, during the twelve months immediately before the date of the **damage**.

### 18.5 Associated companies

Associated companies means any company not being a **subsidiary company** as declared to and accepted by the **insurer**.

### 18.6 Bodily injury

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

### 18.7 Building services equipment

- 18.7.1 Building services equipment shall mean:
  - a) boilers and pressure plant subject to internal steam pressure or used for storage of fluids under pressure;
  - b) plant used for the generation, transmission or utilisation of energy;
  - c) piping associated with any of the above;
  - d) lifts or escalators;

- e) air conditioning;
- f) **computer control systems** pertaining to the above.

18.7.2 Building services equipment includes all integral parts of any item of plant and machinery but does not include even if integral to the plant and machinery:

- a) supporting structure, foundation, masonry, brickwork, cabinet, compartment or air supported structure or building;
- b) insulating or refractory material;
- c) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
- d) water piping other than boiler feedwater piping, boiler condensate, return piping, hot water heating and supply piping or water piping forming a part of a refrigerating or air conditioning system;
- e) vehicles, aircraft, floating vessels or any equipment mounted on such vehicle, aircraft or floating vessel;
- f) mobile plant and equipment dragline, excavation or construction equipment;
- g) equipment manufactured by the **insured** for sale;
- h) tools, dies, cutting edges, crushing surfaces, trailing cables, non metallic linings, driving belts or bands, chains, consumables and auxiliary materials, reagents, toner, coolant and extinguishing medium, development fluids, cassette ribbons, image and sound carriers, films, film/foil combinations, specially prepared paper and type face carriers, light sources, fuses, batteries, filters, cutters, bits, moulds, dies, heating elements, or any part requiring periodic renewal or replacement;
- i) any electronic equipment (other than **computer control systems**), used for research, diagnostic, treatment, experimental or other medical or scientific purposes;
- j) any manufacturing production or process equipment meaning any machine or apparatus which takes in, processes, forms, cuts, shapes, grinds or conveys raw materials, materials undergoing the process or the finished product, including any equipment forming a part of the dedicated power supply, driving or controlling mechanism for such machine or apparatus;
- k) domestic laundry, kitchen, audio visual and home entertainment equipment when such equipment is used in private living quarters;
- l) equipment owned by tenants of the **insured**;
- m) neon signs;
- n) desktop computers, laptop computers, tablet computers, smart phones, PDAs and/or other software and peripherals.

## 18.8 Buildings

Buildings means the fixed permanent structures at the **premises** including:

- 18.8.1 landlord's fixtures and fittings therein and thereon;
- 18.8.2 outbuildings and annexes together with extensions and canopies adjoining thereto or communicating therewith, gangways, bridges, conveyors, trunks, lines, wires, service pipes and other equipment;
- 18.8.3 foundations;
- 18.8.4 adjoining gangways, yards, roadways or pavements, car parks, barriers, forecourts, artificial surfaces constructed of concrete or asphalt around and pertaining thereto, drains, sewers and gutters;
- 18.8.5 walls, gates, fences and signage;
- 18.8.6 soft and hard landscaping, ponds, water features, lakes and swimming pools;
- 18.8.7 solar panels;
- 18.8.8 cleaning cradles;

- 18.8.9 security lighting, security cameras and other security or fire protection devices, television, radio, satellite receiving aerials, communication aerials, their fittings and masts affixed to the buildings, fixed poles or fixed pylons at the **premises**;
- 18.8.10 telephone, gas, water and electricity meters, piping, ducting, trunking, cables, wires and associated control gear, instruments and accessories and the like which is in or under adjoining yards or roadways extending to the public mains and which partly or wholly serves to supply the **premises**;
- 18.8.11 fixed storage tanks;
- 18.8.12 washroom and sanitary fittings;
- 18.8.13 property comprising fixtures and fittings formerly the property of tenants which has been relinquished to the **insured**;

belonging to the **insured** or for which the **insured** is responsible.

## 18.9 Business

The activities of the **insured** as stated in the **schedule** including:

- 18.9.1 provision and management of canteens, sports, social and welfare and medical organisations for the benefit of employees and/or the **insured's** pensioners, sponsorships, medical, dental, nursing, first aid, fire, rescue and ambulance services, principally in connection with but not limited to the operations of the **insured**;
- 18.9.2 provision of security services for the benefit of the **insured**;
- 18.9.3 provision of nursery, crèche or child care facilities where incidental to the business;
- 18.9.4 provision of educational facilities;
- 18.9.5 property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
- 18.9.6 organisation of and participation in exhibitions, trade fairs, conferences and the like,
- 18.9.7 the organisation of charitable events or similar fund raising activities;
- 18.9.8 sponsorship of events, organisations, entities and individuals;
- 18.9.9 repair, maintenance and servicing of the **insured's** mechanically propelled vehicles and sale or disposal of the **insured's** property and goods, including mechanically propelled vehicles;
- 18.9.10 provision of gifts and promotional material incidental to the business.

## 18.10 Computer control systems

Computer control systems means all computer equipment including interconnecting wiring fixed disks and telecommunications equipment used for the storage and communication of electronically processed **data** owned by or leased hired or rented to the **insured**. Computer control systems shall not include equipment used in connection with any manufacturing production or process equipment meaning any machine or apparatus which takes in, processes, forms, cuts, shapes, grinds or conveys raw materials, materials undergoing the process or the finished product, including any equipment forming a part of the dedicated power supply, driving or controlling mechanism for such machine or apparatus.

## 18.11 Computer records

Computer records means all current and backup computer records (excluding fixed disks and paper records of any description) incorporating stored programs and/or information stored thereon.

## 18.12 Computer systems

Computer systems means a computer or other equipment or component or system or item which processes stores transmits or receives **data**.

## 18.13 Contents

18.13.1 Contents means:

- a) Contents of common parts, including fitted carpets, furniture, furnishings, potted plants and their containers, fixtures and fittings, contents of fixed fuel tanks, refuse disposal bins and skips; or
- b) Contents of residential accommodation, including furniture, furnishings, carpets, audio visual equipment and other household goods in any self-contained flat or other private dwelling at the **premises**, the property of the **insured** or for which the **insured** is responsible;

the property of the **insured** or for which the **insured** is responsible, whilst contained in or about the **buildings** at the **premises**.

## 18.14 Contracting party

Contracting party means a company, firm or individual who has a direct contractual relationship with the **insured**.

## 18.15 Damage/damaged

Damage means:

- 18.15.1 for **insured sections** Property, Loss of rent receivable and Terrorism, loss of, destruction of or damage to tangible property arising out of a cause not otherwise excluded in the Exclusions to the insured sections Property, Loss of rent receivable, Failure of building services and Terrorism;
- 18.15.2 for the **insured section** Failure of Building services, destruction of or damage to **Building Services equipment** caused by **Electrical or mechanical failure**
- 18.15.3 for **insured sections** Property owners', Products, and Pollution liability, loss of use of tangible property that has been lost, destroyed or damaged but not economic loss.

## 18.16 Data

Data means data of any sort whatever, including without limitation tangible or intangible data, and any programs or software, bandwidth, cryptographic keys, databases, documents, domain names or network addresses or anything similar, files, interfaces, metadata, platforms, processing capability, storage media, transaction gateways, user credentials, websites, or any information whatever.

## 18.17 Declared value

Declared value means the **insured's** assessment of the cost of reinstatement of the **property insured** arrived at in accordance with the **reinstatement** definition at the level of costs applying at inception of the **period of insurance** (ignoring inflationary factors which may operate subsequently) together with due allowance for the additional costs of reinstatement to comply with public authority requirements, professional fees and debris removal costs.

## 18.18 Deductible

For all **insured sections** except Property owners', Products and Pollution liability the deductible forms part of the **sum insured, limit of liability** or any **sub-limit** as applicable, and deductible means the first amount to be borne by the **insured**, or the first period of time that is uninsured, in respect of each and every claim or any one occurrence (as stated in the **schedule**), potential claim or potential occurrence as ascertained after the application of all other terms and conditions of this insurance.

For **insured sections** Property owners', Products and Pollution liability the deductible forms part of the **limit of indemnity** or any **sub-limit** as applicable and deductible means the first amount payable by the **insured** in respect of each and every claim or any one occurrence (as stated in the **schedule**), potential claim or potential occurrence and/or defence costs (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this insurance.

Where more than one deductible could be applied to one claim or occurrence, only the one deductible, the highest deductible, will be applied.

## 18.19 Defence costs

Defence costs means

- 18.19.1 costs (other than claimant costs recoverable from the **insured** or any **other insured party**) incurred at the request of the **insured**, with the prior consent of the **insurer** in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;
- 18.19.2 costs and expenses incurred by the **insured** in pre-trial and case reviews;
- 18.19.3 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or suit, the **insurer** will not pay any pre-judgment interest imposed or accruing after the date of such offer;
- 18.19.4 all interest accruing on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;
- 18.19.5 the cost of attendance in court as a witness at the **insurer's** request, payable at the following rates per day on which attendance is required:
  - a) any principal director or partner of the **insured** - GBP500;
  - b) any **other insured party** - GBP250;
- 18.19.6 costs incurred at the request of the **insured**, with the prior consent of the **insurer** of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**.

## 18.20 Denial of access

Denial of access means trespass or interference with any easement, right of air, light, water or way.

## 18.21 Denial of service attack

Denial of service attack means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability or performance of networks, network services, network connectivity or **computer systems**. Denial of service attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses, the generation of excess or non-genuine traffic between and amongst networks and the procurement of such actions or instructions by other **computer systems**.

## 18.22 Documents

Documents means business books and records, deeds, documents (including stamps thereon), manuscripts, plans and writings of every description and books (written or printed) excluding **computer systems**, computer tapes and records.

## 18.23 Electronic data

Electronic data means facts, concepts and information converted to a form usable for communication, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment, including programmes, software and other coded instructions for such equipment.

## 18.24 Eligible insured sections

Eligible insured sections means any **insured sections** shown as insured on the **schedule** providing direct insurance cover for the risk of fire and/or explosion (either alone or with other perils) for any of the following heads of cover:

- a) buildings and completed structures;
- b) other property (including contents, engineering, contractors and computers)
- c) business interruption; or
- d) book debts,

provided always that each eligible insured section shall be deemed to be a separate eligible insured section whether the item insured is insured under separate policies, under separate terms of a policy or under separate sections of combined or package policies.

## 18.25 Employee

18.25.1 Employee means any:

- a) director of the **insured**;
- b) person whilst engaged under a contract of service or apprenticeship with the **insured**;
- c) person whilst acting in the capacity of non-executive director of the **insured**; and
- d) solely in respect of **insured sections** Employers' liability, Property owners', Products and Pollution liability, employee shall include any person not under a contract of service or apprenticeship who is, at the requirement of the **insured**, supplied to, hired or borrowed by the **insured** in the course of **business** and under the control of the **insured** including but not limited to:
  - i) persons on secondment from another company that is not an insured under this **policy**;
  - ii) labour masters or persons supplied by them;
  - iii) labour-only subcontractors;
  - iv) self-employed persons;
  - v) drivers or operators of hired-in plant;
  - vi) persons engaged under work experience, training, study, exchange or similar schemes;
  - vii) any officer, member or voluntary helper of the organisations or services stated in the **business**;
  - viii) voluntary workers, helpers and instructors;
  - ix) persons working under the Community Offenders Act 1978, the Community Offenders (Scotland) Act 1978 or similar legislation;
  - x) employee(s) elected on any industry users' committee;
  - xi) outworkers or homeworkers employed under contracts to personally execute any work in connection with **business** while they are engaged in that work;
  - xii) any other person defined under Sections 32.-(1), 35.-(2) and 54.-(3)(b) of the National Minimum Wage Act 1998;
  - xiii) prospective employees who are being assessed by the **insured** as to their suitability for employment;
  - xiv) any person a Court of Law in the **United Kingdom** deems to be an employee;
- e) provided that the **insured** can always request that any such person is not treated as an employee.

## 18.26 Electrical or mechanical failure

Electrical or mechanical failure means the sudden and unforeseen breakdown, derangement distortion, burning out or fault arising from either mechanical or electrical defect.

## 18.27 Excess

For all **insured sections** except Property owners', Products and Pollution liability the **sum insured, limit of liability** or any **sub-limit** as applicable, is additional to the excess and excess means the first amount to be borne by the **insured**, or the first period of time that is uninsured, in respect of each and every claim or any one occurrence (as stated in the **schedule**), potential claim or potential occurrence as ascertained after the application of all other terms and conditions of this insurance.

For **insured sections** Property owners', Products and Pollution liability the **limit of indemnity** or any **sub-limit** as applicable is additional to the excess and excess means the first amount payable by the **insured** in respect of each and every claim or any one occurrence, potential claim or potential occurrence and/or defence costs (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this insurance.

Where more than one excess could be applied to one claim or occurrence, only the one excess, the highest excess, will be applied.

## 18.28 Excess (damage only)

The **limit of indemnity** is additional to the excess (damage only) and excess (damage only) means the first amount payable by the **insured** in respect of each and every **damage** claim or occurrence (as stated in the **schedule**), potential **damage** claim, potential occurrence and/or related **defence costs** (but not adjusters' fees), or any one occurrence as ascertained after the application of all other terms and conditions of this insurance.

Where more than one excess could be applied to any one claim or occurrence only the one excess, the highest excess, will be applied.

## 18.29 Foreign currency

Foreign currency means any currency other than pounds sterling (GBP).

## 18.30 Free rate of exchange

Free rate of exchange means the rate of exchange published in the Financial Times at the date that settlement is agreed.

## 18.31 Hacking

Hacking means unauthorised access to any **computer system**, whether the property of the **insured** or not.

## 18.32 Hazardous substance

**Hazardous substance** means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

## 18.33 Indemnity period

Indemnity period means the period beginning with the occurrence of the **damage** or the period beginning after the expiry of any time **excess** following the **damage** and ending not later than the **maximum indemnity period** thereafter during which the results of the **business** will be affected in consequence of the **damage**.

If at the date of the **damage** the **premises** are subject to a rent free period concession under the terms of the **insured's** lease, indemnity period means the period beginning with the date following the **damage** that the rent free period finishes and ending not later than the expiry of the **maximum indemnity period** thereafter during which the results of the **business** are affected in consequence of the **damage**.

## 18.34 Injury

Injury means:

- 18.34.1 a specific injury which is sustained by the **insured person** during the **period of insurance**, and is caused by an **accident**; and

- 18.34.2 solely and independently of any other cause, causes death or disablement of the **insured person**; but
- 18.34.3 solely in respect of Legal expenses cover, injury means bodily injury or death but does not mean any sickness, disease or naturally occurring condition or degenerative process.

### 18.35 Insured/insured's/insureds

- 18.35.1 For all **insured sections** except DAS Legal Expenses **insured section** insured / insured's / insureds means:
- a) the company or other organisation shown as insured in the **schedule** including any **subsidiary companies** of the insured that are in existence at the inception date of the insurance and have been declared to the **insurer** until such time as they may be sold or otherwise disposed of (but not excluding any liabilities incurred prior to disposal); and
  - b) the person or people shown as insured in the **schedule**;
  - c) including in either case the legal or personal representatives of the **insured** in respect of any claim under this **policy** incurred on behalf of the **insured**.
- 18.35.2 For the DAS Legal Expenses **insured section** insured / insured's / insureds means the company, firm, partnership or trading individual as specified in the **schedule**.

### 18.36 Insured peril

Insured peril means any cause not otherwise excluded.

### 18.37 Insured person

Insured person means:

- 18.37.1 the **insured** or any principal, director, partner or **employee** of the **insured**; or
- 18.37.2 any person acting on behalf of the **insured**, other than an employee of a security company or organisation, not being over seventy (70) years of age nor being under sixteen (16) years of age;
- 18.37.3 but for **insured section – DAS Legal Expenses**, insured person means:
- a) **You** and the directors, partners, managers, employees and any other individuals declared to the **insurer** by **you**.
  - b) A person contracted to work for **you** who works for **you** on the same basis as **your** employees and performs that work under **your** supervision and direction.

### 18.38 Insured section

Insured section means a section of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **policy schedule**.

### 18.39 Insurer/insurer's/insurers

Insurer / insurer's / insurers means the party specified as insurer in the **schedule** and any other subscribing insurers.

### 18.40 Limit of indemnity

- 18.40.1 For **insured sections Employers' liability, Property owners', Products, Pollution liability** and **Legal expenses**, limit of indemnity means the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:
- a) **insureds** or **other insured parties**, persons or organisations bringing claims or suits; or
  - b) claims against the **insured** or series of claims against the **insured** or claims or series of claims made by the **insured**.
- 18.40.2 Where any limit of indemnity or any **sub-limit of indemnity** is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.

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

18.40.4 For **insured sections** and **coverage extensions** to **Property owners', Products and Pollution liability** where indemnity may be provided under two (2) or more of these **insured sections** of this **policy**, then the combined single limit stated in the **schedule** is the maximum the **insurer** will pay for any insured event to which such paragraphs apply in combination.

#### 18.41 Maximum indemnity period

Maximum indemnity period means the period stated in the **schedule**.

#### 18.42 Money

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

#### 18.43 Negotiable money

Negotiable money means cash, bank and currency notes uncrossed cheques, giro cheques including pre-authenticated giro cheques, uncrossed warrants, uncrossed postal and money orders, current postage and revenue stamps, National Savings stamps and certificates, holiday with pay, stamps and gift tokens, National Insurance stamps (whether affixed to cards or not,) debit card sales vouchers, trading stamps, luncheon vouchers and bills of exchange, securities for money, travel warrants and authenticated travel tickets, phonecards and mobile phone vouchers for use by the **insured** or any partner, director or employee of the **insured** in connection with the **insured's business**, stock of lottery scratch cards, pre-loaded travel cards (including Oyster cards or similar), consumer redemption vouchers and company sales vouchers and unexpired units in franking machines, all belonging to the **insured** or for which the **insured** has accepted responsibility.

#### 18.44 Non-negotiable money

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

#### 18.45 North America

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

#### 18.46 North American jurisdiction

North American jurisdiction means any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which form part of **North America** or which operate under the laws of such countries or any states, provinces or territories forming part of them (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) then following any event which is or may be the subject of indemnity under the laws of **North America**.

#### 18.47 Notifiable disease

a) Notifiable disease means illness sustained by any person resulting from:

|                            |                                                          |              |
|----------------------------|----------------------------------------------------------|--------------|
| Acute encephalitis         | Haemolytic uraemic syndrome (HUS)                        | Rubella      |
| Acute meningitis           | Infectious bloody diarrhoea                              | SARS         |
| Acute poliomyelitis        | Invasive group A streptococcal disease and scarlet fever | Smallpox     |
| Acute infectious hepatitis | Legionnaires' Disease                                    | Tetanus      |
| Anthrax                    | Leprosy                                                  | Rabies       |
| Botulism                   | Malaria                                                  | Tuberculosis |
| Brucellosis                | Measles                                                  |              |

|                                              |                           |                                |
|----------------------------------------------|---------------------------|--------------------------------|
| Cholera                                      | Meningococcal septicaemia | Typhus                         |
| Diphtheria                                   | Mumps                     | Viral haemorrhagic fever (VHF) |
| Enteric fever (typhoid or paratyphoid fever) | Plague                    | Whooping cough                 |
| Food poisoning                               | Yellow fever              |                                |

b) And any additional diseases notifiable under the Health Protection (Notification) Regulations 2010.

## 18.48 Nuclear hazards

Nuclear hazards means:

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

## 18.49 Nuclear installation

Nuclear Installation means any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument, being an installation designed or adapted for:

- 18.49.1 the production or use of atomic energy;
- 18.49.2 the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiations; or
- 18.49.3 the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter, being matter which has been produced or irradiated in the course of the production or use of nuclear fuel.

## 18.50 Nuclear reactor

Nuclear reactor means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

## 18.51 Occurrence

In respect of **insured section Terrorism**, occurrence means a single loss or series of losses arising out of and directly occasioned by a single event or a single original cause. However, the duration and extent of any single occurrence shall be limited to all individual losses arising in respect of a continuous period of seventy two (72) hours of which the proximate cause is the same **act of terrorism**.

The **insured** may choose the date and time when any such period of seventy two (72) hours shall commence provided that no two periods overlap and no period commences earlier than the date and time of the happening of the first recorded individual loss to the **insured** as a result of the **act of terrorism**.

Should any such seventy two (72) consecutive hour period extend beyond the expiry or cancellation date, the **insurer** shall be liable as if such period had fallen entirely within the **period of insurance** of the **policy**.

## 18.52 Offshore

Offshore means:

- 18.52.1 work in or on any offshore rig or platform or support or accommodation vessel for any offshore rig or platform;

18.52.2 in transit to and from or between any offshore rig or platform or support or accommodation vessel from the time of embarkation onto a conveyance at the point of final departure to an offshore rig or platform until disembarkation from the conveyance onto land upon return from an offshore rig or platform.

### 18.53 Other insured party

Other insured party means any of the following parties:

- 18.53.1 any director, partner, **employee** or a former **employee** of the **insured**;
- 18.53.2 any officers, members' committee and/or **employee** and voluntary helpers of the **insured's** canteen and welfare organisations, nursery, crèche or child care facilities, sports and social organisations, in their respective capacities as such;
- 18.53.3 any officers and members of the **insured's** security, rescue, first aid or fire and ambulance services or medical organisation other than any qualified medical practitioner while working in a professional capacity in their respective capacities as such;
- 18.53.4 any director or partner or executive of the **insured** in respect of private work undertaken by any **employee** for a director, partner or executive of the **insured**;
- 18.53.5 any officers or trustees of the **insured's** pension scheme(s).

### 18.54 Period of insurance

Period of insurance means the period shown as such on the **schedule**, which times are taken as Greenwich Mean Time unless otherwise stated.

### 18.55 Personal injury

For all **insured sections** except DAS Legal Expenses personal injury means **bodily injury** and/or harm arising out of one or more of the following offences committed in the course of the **business**:

- a) false arrest;
- b) detention or imprisonment;
- c) malicious prosecution;
- d) wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;
- e) invasion of the right of privacy;
- f) libel and slander.

### 18.56 Phishing

Phishing means any access or attempted access to **data** or information made by means of misrepresentation or deception.

### 18.57 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.

### 18.58 Pollutant

Pollutant means 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.

### 18.59 Pollution

Pollution means:

18.59.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time other than any discharge release or escape of legionella or other airborne or waterborne pathogens from water tanks, water systems, air conditioning plants, cooling towers and the like;

18.59.2 any cost, expense, claim or suit arising out of any request, demand or order arising from actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that the **insured** 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**.

## 18.60 Premises

Premises means the buildings or land that are owned, leased, hired or tenanted by or on loan to the **insured** for the purpose of the **business**.

## 18.61 Pressure explosion

In respect of **insured section - failure of building services** pressure explosion shall mean the sudden and violent rending of the plant and machinery by force of internal steam or other fluid pressure (other than pressure of chemical action or ignition of the contents or pressure or ignition of gases in the furnaces or flues) causing bodily displacement of any part of the plant and machinery together with the forcible ejection of the contents.

## 18.62 Preventative costs

Preventative costs means sums that the **insured** is liable to pay for prevention of imminent threat of environmental damage as provided for in any **United Kingdom** law implementing the EU Environmental Liability Directive.

## 18.63 Product

Product means any property (including integral software, packaging, containers, labels and instructions for use) after it has left the custody or control of the **insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **insured**.

## 18.64 Property

Property means all property whatsoever, but excluding:

- a) Any land or building which is wholly or partially occupied as a private residence, unless:
  - i) insured under the same contract of direct insurance as the remainder of the building which is not a private residence;
  - ii) not insured in the name of an individual; or
  - iii) insured in the name of an individual, and the commercial element of the building occupies more than twenty percent (20%) of the building.

For the purpose of this clause, a trustee, beneficiary, executor of a will or sole trader is not deemed to be an individual unless they occupy the premises or any part thereof as their own private residence.

- b) any **nuclear installation** or **nuclear reactor** and all fixtures and fittings situated thereon and attached thereto and all pipes wires cables drains or other conduits or service media of any description which are affixed or connected to or in any way serve such **nuclear installation** or **nuclear reactor**.

For the purposes of clause 5.2.1, **property** shall exclude:

- c) any money, currency, electronic cryptographic or virtual currency including Bitcoin or anything similar, negotiable or non-negotiable instruments, financial securities or any other financial instrument of any sort whatever; and
- d) any **data**.

### 18.65 Property insured

Property insured means tangible property described in the **schedule** to this **policy** that includes a specific **sum insured** against each or all of them and which is more specifically defined therein.

### 18.66 Proposal

Proposal means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form and medical questionnaire and other relevant information that the **insurer** may require.

### 18.67 Reinstatement

Reinstatement means the repair or replacement of **property insured** that has sustained **damage** as specified in the basis of settlement clause under 'Other property terms and conditions'.

### 18.68 Rent receivable

Rent receivable means the money which is contractually payable to the **insured** for rent and other charges and for services rendered in relation to the occupation or tenancy of buildings at the **premises**.

### 18.69 RIDDOR

RIDDOR means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

### 18.70 Schedule

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

### 18.71 Specified losses

Specified losses means:

- a) the cost of reinstatement, replacement or repair in respect of damage to or destruction of **property** insured by the **insured**; or
- b) the amount of business interruption loss suffered directly by the **insured** by way of loss of or reduction in profits, revenue or turnover or increased cost of working and not by way of liability to any third party as a direct result of either damage to or destruction of **property** or as a direct result of denial, prevention or hindrance of access to or use of the **property** by reason of an **act of terrorism** causing damage to other **property** within one mile of the **property** to which access is affected.

### 18.72 Specified perils

Specified perils means fire, explosion, flood, escape of water from any tank, apparatus or pipe (including any sprinkler system), impact of aircraft or any aerial devices or articles dropped from them, impact of any sea-going or water-going vessel or of any vehicle whatsoever or of any goods or cargo carried in or on such vessel or vehicle, destruction of, damage to or movement of buildings or structures, plant or machinery other than any **computer system, data or money**.

### 18.73 Standard rent receivable

Standard rent receivable means the **rent receivable, trend adjusted**, during the period in the twelve (12) months immediately before the date of the **damage** which corresponds with the **indemnity period**.

#### **18.74 Sub-limit of liability /Sub-limit of indemnity /Sub-limit**

Sub-limit of liability/ Sub-limit of indemnity/ Sub-limit means the maximum liability of the **insurer** under a specified section, clause or other part of this **policy** and is the amount stated in the **schedule**.

#### **18.75 Subrogation**

Subrogation means the right of the **insurer** who has granted indemnity to take over any recovery rights the **insured** may have against third parties liable for the same loss.

#### **18.76 Subsidiary company**

18.76.1 Subsidiary company means:

- a) any company in respect of which an insured (either directly or indirectly through one (1) or more of its subsidiary companies):
  - i) controls the composition of the board of directors;
  - ii) controls more than half the voting power at a general meeting of shareholders; or
  - iii) holds more than half of the issued share capital (regardless of class of share);
- b) any company, as defined above, which is acquired or created on or subsequent to the inception date of this **policy** and of which the total assets do not exceed the amount stated on the **schedule**
- c) any other company that the **insurer** has given prior written consent to for its inclusion as a subsidiary company under this **policy**.

#### **18.77 Sum insured**

Sum insured means the sum specified as the sum insured in the **schedule** and is the **insurer's** maximum liability for losses relating to the listed item.

#### **18.78 Territorial limits**

As described in the **schedule**.

#### **18.79 Territory**

means England and Wales and Scotland but not the territorial seas adjacent thereto as defined by the Territorial Sea Act 1987, nor Northern Ireland nor the Isle of Man nor the Channel Islands.

#### **18.80 Terrorism**

18.80.1 For **insured sections Property, Loss of rent receivable, Failure of building services and Terrorism**

For all territories other than England, Wales and Scotland;

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group (s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) endangers life other than that of the person committing the action; or
- b) involves violence against one or more persons; or
- c) involves **damage** to property; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

For England, Wales and Scotland:

An act of terrorism includes any act of any persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing by force or violence, of Her Majesty's government in the Great Britain or any other government de jure or de facto.

**18.80.2 For insured sections Employers', Property owners', Products, Pollution liability and Legal expenses**

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof; and appears to be intended to

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

**18.81 Trend adjusted**

Trend adjusted means adjustments will be made to figures as may be necessary to provide for the trend of the **business** and for variations in or circumstances affecting the **business** either before or after the **damage** or which would have affected the **business** had the **damage** not occurred, so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which but for the **damage** would have been obtained during the relative period after the **damage**.

**18.82 Turnover**

Turnover means the money paid or payable to the **insured** for goods sold and delivered and for services rendered in the course of the **business** at the **premises**.

**18.83 United Kingdom**

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

**18.84 Unoccupied**

Unoccupied means any **building** that is owned or used by the **insured** in the course of the **business** and has become vacant, disused or unfurnished and empty for a period in excess of thirty (30) days.

**18.85 VAT**

VAT means Value Added Tax under the Value Added Tax Act 1994 or successor or amending legislation.

**18.86 Vehicle**

Vehicle means any vehicle including a caravan or trailer constructed to be towed by such a vehicle on the public highway, which is owned by the **insured** or leased to the **insured** other than one used in connection with racing and/or rallies and/or competition of any kind.

**18.87 Virus or similar mechanism**

Virus or similar mechanism means program code, programming instruction or any set of instructions constructed with the purpose and ability, or purposely used, to damage, interfere with, adversely affect, infiltrate or monitor computer programs, **computer systems**, **data** or operations, whether involving self-replication or not. Virus or similar mechanism includes but is not limited to, trojan horses worms and logic bombs and the exploitation of bugs or vulnerabilities in a computer program to damage, interfere with, adversely affect, infiltrate or monitor as above.

**18.88 War**

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

**18.89 Work away**

Work away means work, operations, installation or services performed by or on behalf of the **insured** but not on its **premises**.

**18.90 You/Your**

The **insured**, as the context requires.

## 19 How to Complain

### 19.1 Complaints to QBE and DAS

#### 19.1.1 Non-DAS Legal Expenses complaint

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

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

Email: [CustomerRelations@uk.qbe.com](mailto:CustomerRelations@uk.qbe.com)

Telephone: 020 7105 5988

#### 19.1.2 DAS Legal Expenses complaint

For a complaint concerning cover under the **insured section** - DAS Legal Expenses the **insured** should contact DAS by:

Telephone: 0344 893 9013

Email: [customerrelations@das.co.uk](mailto:customerrelations@das.co.uk)

Write to the Customer Relations Department | DAS Legal Expenses Insurance Company Limited | DAS House | Quay Side | Temple Back | Bristol | BS1 6NH

Complete an online complaint form at [www.das.co.uk/about-das/complaints](http://www.das.co.uk/about-das/complaints)

### 19.2 The UK Financial Ombudsman Service (UK FOS)

If the **insured** feels that its complaint has not been satisfactorily resolved, the **insured** may be eligible to contact the UK FOS to review the complaint. Information about the eligibility criteria is available on the UK FOS website:

<https://www.financial-ombudsman.org.uk/consumers/how-to-complain>

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

### 19.3 Financial Services Compensation Scheme (FSCS)

The **insured** may be entitled to compensation from the FSCS if the **insurer** is unable to meet its obligations under the policy. 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.

## QBE European Operations



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