

Design & Construct Professional Liability

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SECTION 1: INSURING CLAUSES

QBE agrees subject to the terms, Conditions, limitations and Exclusions of this **Policy** to:

LEGAL LIABILITY

1.1 pay on behalf of the **Insured** amounts payable by way of compensatory damages (including where applicable claimants' legal costs and expenses) for any **Claim** for compensation first made against the **Insured** during the **Period of Insurance** and notified to **QBE** in accordance with the terms of this **Policy**, in respect of liability for negligence:-

(a) by the **Insured** in the conduct of the **Professional Business**;

CONSULTANTS, SUB- CONTRACTORS OR AGENTS

(b) by the **Insured** in the conduct of the **Professional Business** arising from any negligence committed or alleged to have been committed by any consultant, sub-contractor or agent for whose acts, errors or omissions the **Insured** is legally liable;

and in respect of libel or slander by the **Insured** in the conduct of the **Professional Business**.

DEFENCE COSTS & EXPENSES

1.2 pay on behalf of the **Insured** **Defence Costs and Expenses** incurred, with the prior written consent of **QBE**:

(a) in the defence or settlement of any **Claim** insured by this **Policy**;

COSTS FOR CRIMINAL PROCEEDINGS

(b) in the defence of any proceedings first made against the **Insured** during the **Period of Insurance** and notified to **QBE** in accordance with the terms of this **Policy** in respect of the **Insured's** conduct of their **Professional Business** brought under a prevailing listed building, building regulation or health and safety legislation including the Construction (Design and Management) Regulations 1994, the Planning (Hazardous Substances) Act 1990, the Occupiers Liability Act 1957 and the Health and Safety at Work Act 1974 and any applicable statutory instruments, orders or regulations or any applicable codes of practice or procedures issued by the Health and Safety Executive or the Health and Safety Commission.

**COSTS PRIOR TO
HAND-OVER**

1.3 indemnify the **Insured** subject to notification in accordance with the Claims and Notification Provisions, which are conditions precedent to the provision of indemnity, for costs and expenses reasonably incurred with the prior written consent of **QBE** which will not be unreasonably withheld in respect of rectifying prior to any practical completion, take-over certificate or defects period any part of the works constructed by the **Insured** to the extent that the **Insured** is able to demonstrate on a balance of probabilities that the need for such rectification is due to the **Insured's** negligence in the conduct of their **Professional Business** and is necessary to mitigate a **Claim** or likely **Claim** that would otherwise have been insured under Clause 1.1.

LOSS OF DOCUMENTS

1.4 indemnify the **Insured** for costs and expenses reasonably incurred in replacing or restoring **Documents** discovered by the **Insured** to be lost, damaged or destroyed and, after diligent search, cannot be found. Provided that:

- (a) the discovery of such loss of **Documents** occurred during the **Period of Insurance** and is notified to **QBE** in accordance with the terms of this **Policy**;
- (b) such coverage shall be limited to the costs, charges and expenses of whatsoever nature incurred by the **Insured** in replacing and/or restoring such **Documents** and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by **QBE** with the consent of the **Insured**;
- (c) such coverage shall be limited to the loss of any **Documents** which were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of business.

SECTION 2: EXCLUSIONS

QBE shall have no liability under this **Policy** in respect of any **Claim** or loss:

EXISTING CLAIMS

- 2.1 (a) made, threatened or intimated against the **Insured** prior to the **Period of Insurance**;
- (b) directly or indirectly arising out of, or in any way involving any fact or circumstance:
- i. of which written notice has been given, or ought reasonably to have been given, under any previous policy (whether insured by **QBE** or not); or
 - ii. of which the **Insured** first became aware prior to the **Period of Insurance** and which the **Insured** knew or ought reasonably to have known had the potential to give rise to a **Claim** or loss;

FRAUD/DISHONESTY/ RECKLESS DISREGARD

- 2.2 directly or indirectly arising out of, or in any way involving:
- (a) any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of any **Insured** or their consultants, sub-contractors, or agents; or
- (b) negligence of any **Insured** or their consultants, sub-contractors, or agents committed or alleged to have been committed with reckless disregard for the consequences;

CONTRACTUAL LIABILITY

- 2.3 directly or indirectly arising out of, or in any way involving contractual liability in respect of any:
- (a) fitness for purpose warranty;
- (b) indemnity, performance warranty or guarantee;
- (c) penalty clause or liquidated damages clause;

but only to the extent that such contractual liability is greater than the liability which would otherwise have arisen in the absence of the relevant contractual provision referred to at (a), (b) or (c) above;

ASSIGNEES OF COLLATERAL WARRANTY	2.4	brought or maintained by or on behalf of any assignee (other than the first three) of the benefit of any collateral warranty or duty of care agreement entered into by the Insured in favour of any party other than the Insured's own client;
INSURANCE/FINANCING	2.5	directly or indirectly arising out of, or in any way involving the effecting or maintenance of insurance and/or the provision of finance or advice on financial matters;
SPECIFICATIONS AND ESTIMATES	2.6	<p>directly or indirectly arising out of, or in any way involving any:</p> <ul style="list-style-type: none"> (a) incorrect or inadequate specification of materials or performance; or (b) incorrect or inadequate estimate of construction costs or cost advice but this Exclusion shall not apply where such estimate of construction costs or cost advice is provided by a professionally qualified Quantity Surveyor; or (c) incorrect or inadequate programming or estimate of the period of construction; <p>unless in any such case arising out of an unintentional negligent error or omission in the conduct of the Professional Business;</p> <p>Provided always that the Insured shall establish to the satisfaction of QBE that the error or omission was unintentionally negligent.</p>
CONSORTIUM	2.7	directly or indirectly arising out of, or in any way involving the Professional Business carried out by the Insured for and/or in the name of any consortium or joint venture of which the Insured forms part unless otherwise agreed by QBE ;
UNSUPERVISED WORK	2.8	directly or indirectly arising out of, or in any way involving the performance of professional services not under the direction and direct control and supervision of professionally qualified persons who are professionally qualified through a recognised professional body relevant to the activity being undertaken, or persons having at least five years relevant technical experience in the conduct of the Professional Business ;
FINAL & BINDING ADJUDICATION	2.9	for any amount payable by the Insured in accordance with the decision of an adjudicator which is final and not capable of being finally determined by legal or arbitration proceedings;

TRADING DEBTS	2.10	directly or indirectly arising out of, or in any way involving any trading debt incurred by the Insured or any guarantee or undertaking given by the Insured for a debt or performance of any other obligation by a third party;
ASSOCIATED COMPANY	2.11	<p>brought or maintained by or on behalf of:</p> <p>(a) any Insured or any Subsidiary of the Insured; or</p> <p>(b) any firm, or entity in which the Insured or any director of the Insured has a financial or executive interest;</p> <p>provided that this exclusion shall not apply to such Claims originating from an independent third party or to loss which is insured under Clause 1.3 or Clause 1.4;</p>
PLEA OR FINDING OF GUILT	2.12	for Defence Costs and Expenses payable under Clause 1.2(b) following a plea or finding of guilt on the part of the Insured or in the event that a Queen's Counsel advises that there are no reasonable prospects of successfully defending the proceedings provided that this Exclusion shall not apply to Defence Costs and Expenses incurred solely for the purpose of making a plea in mitigation before sentencing or incurred in making an appeal if such Queen's Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable;
EMPLOYER'S LIABILITY	2.13	directly or indirectly arising out of, or in any way involving bodily injury, mental anguish or emotional distress, sickness, disease or death of any Employee ;
PROPERTY/OCCUPIER'S LIABILITY	2.14	directly or indirectly arising out of, or in any way involving the ownership, use, occupation or leasing of mobile or immobile goods or property by to or on behalf of the Insured ;
OTHER INSURANCE	2.15	for which the Insured is entitled to coverage under any other insurance policy;
FINES & PENALTIES	2.16	for taxes, fines, penalties, punitive, exemplary, aggravated or multiplied damages (including additional damages under Section 97(2) of the Copyright, Designs and Patents Act 1988) or any Claim deemed uninsurable by law;

POLLUTION

- 2.17 directly or indirectly arising out of, or in any way involving actual or alleged seepage pollution or contamination of any kind by any **Pollutant**.

If the actual or alleged seepage pollution or contamination is sudden, unexpected and accidental, **QBE** will provide indemnity subject to the terms and conditions applying to the **Policy** but subject to a costs inclusive aggregate limit of £1,000,000 with no reinstatement.

USA/CANADA

- 2.18 in the form of any kind of legal (including arbitration) or regulatory proceedings brought in the United States of America or Canada or outside of the United States of America or Canada to seek enforcement or upholding of a judgment, award or order made in the United States of America or Canada.

WAR & TERRORISM

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

MOULD

- 2.20 directly or indirectly arising out of, or in any way involving:
- (a) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
 - (b) Any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
 - (c) Any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

PRODUCTS	2.21	directly or indirectly arising out of, or in any way involving goods or products sold, supplied, recalled, repaired, altered, manufactured, constructed, fabricated, installed or maintained by the Insured or by any consultant, sub-contractor or agent of the Insured ;
ASBESTOS	2.22	directly or indirectly arising out of, or in any way involving asbestos.
INSOLVENCY	2.23	directly or indirectly arising out of the insolvency of the Insured .
WORKMANSHIP/SUPERVISION	2.24	<p>arising out of defective workmanship of the Insured or its sub-contractors or any party for whom the Insured has responsibility or for the incorporation into works of any defective or deleterious materials or in respect of Claims arising out of the supervision of the Insured's own labour or that of its sub-contractors.</p> <p>This exclusion shall not apply where such liability arises from negligent design or specification of materials where such design or specification is undertaken by professionally qualified persons who are professionally qualified through a recognised professional body relevant to the activity being undertaken, or persons having at least five years relevant technical experience to the Professional Business. Provided always that the Insured shall establish to the satisfaction of QBE that the error or omission was unintentionally negligent.</p>
RADIATION	2.25	<p>directly or indirectly arising out of, or contributed to by any;</p> <p>(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;</p> <p>(b) radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof</p>

SECTION 3: CLAIMS AND NOTICE PROVISIONS

Each of the following Clauses 3.1 – 3.6 (inclusive) are conditions precedent to the rights of the **Insured** under this **Policy** and **QBE** shall have no liability in respect of any **Claim** or loss to the extent that the **Insured** has not complied with the requirements of those clauses in relation to such **Claim** or loss.

ADJUDICATION NOTICE

3.1 The **Insured** shall give **QBE** written notice of any notice of intention to adjudicate served on or by the **Insured** within 48 hours of the date of such service.

WHEN TO NOTIFY

3.2 (a) Save as provided in Clause 3.1 the **Insured** shall give **QBE** written notice as soon as practicable of:

i. any **Claim** made against any **Insured** or any loss during the **Period of Insurance**; or

ii. any circumstances occurring during the **Period of Insurance** which might reasonably be expected to give rise to a **Claim**; or

iii. any potential loss or circumstances thought likely to result in loss, costs or expenses being incurred in mitigation of a **Claim** or likely **Claim** under this **Policy**.

provided always that such written notice is given to **QBE** during the same **Period of Insurance** or (if the **Insured** renews this insurance with **QBE**) within twenty-eight (28) days after its expiry.

(b) Any such **Claim** or loss which is notified under (a) above and any subsequent **Claim** arising out of circumstances notified under (a) above shall in each case be deemed to have been made during the **Period of Insurance** which expired immediately prior to the commencement of the twenty-eight (28) day period referred to in (a) above.

WHO TO NOTIFY

3.3 Any notice under Clause 3.1 or 3.2 shall be given in writing to **QBE**, and delivered to the address specified in the **Schedule** for this purpose.

WHAT TO NOTIFY

3.4 The **Insured** shall give **QBE** specific written notice of the **Claim** or loss and, in the case of notified circumstances, the reasons for the anticipation of the same, in each case with full particulars including the circumstances, dates and persons involved.

DEFENCE & SETTLEMENT

3.5 (a) The **Insured** agrees not to incur any **Defence Costs and Expenses**, admit liability for or attempt to settle, make any admission, offer any payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **QBE's** written consent, such consent not to be unreasonably withheld. **QBE** shall not be liable for any **Defence Costs and Expenses**, settlement, admission, offer, payment, or assumed obligation to which it has not consented. In any event no action shall be taken which might prejudice **QBE**.

(b) **QBE** shall be entitled at any time to conduct, in the name of the **Insured**, the defence or settlement of any **Claim** or loss and to represent the **Insured** in respect of that **Claim** or loss. Any amount incurred by **QBE** on behalf of the **Insured** shall be part of the **Defence Costs and Expenses**.

CLAIMS MITIGATION &
COMPENSATION

3.6 (a) The **Insured** shall use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **Claim** or loss.

(b) The **Insured** agrees not to incur such costs and expenses as referred to within Insuring Clause 1.3 without **QBE's** written consent, such consent not to be unreasonably withheld. **QBE** shall not be liable for any such costs and expenses, settlement, offer, admission, payment or assumed obligation to which it has not consented. In any event, no action shall be taken which might prejudice **QBE**.

- (c) The **Insured** shall disclose to **QBE** all relevant information and, in addition, shall provide assistance to **QBE** within the timescale they may reasonably require to enable **QBE** or its agents to investigate and/or to defend any **Claim** under this **Policy** (including without limitation by way of compliance with any protocol or other procedural requirements which may be relevant to the jurisdiction in which the **Claim** is brought) and/or to enable **QBE** to determine its liability under this **Policy**.

LEGAL OPINION

- 3.7 (a) **QBE** shall not require the **Insured** to contest any **Claim** unless the legal opinion of a Queen's Counsel (to be mutually agreed upon by the **Insured** and **QBE** or failing such agreement to be nominated by the Chairman for the time being of the Bar Council of England and Wales or where appropriate by a similar official of any similar body in any other applicable jurisdiction) shall advise that such **Claim** should be contested.
- (b) Full consideration as to the financial implications, the damages and costs which are likely to be recovered by the claimant, the likely **Defence Costs and Expenses** and the prospects of the **Insured** successfully defending the **Claim** will be taken into account.
- (c) The cost of such legal opinion shall be regarded as part of the **Defence Costs and Expenses**.

FULL & FINAL SETTLEMENT

- 3.8 In respect of any **Claim** or loss, **QBE** may in its reasonable opinion decide to make a payment to the **Insured** (inclusive of **Defence Costs and Expenses**) of the amount available under the **Limit of Liability** or of an amount for which the **Claim** or loss may be settled (whichever is the lesser) in full and final settlement of all liability of **QBE** to the **Insured** under this **Policy** in respect of that **Claim** or loss.

SUBROGATION

- 3.9 (a) In the event of any payment under this **Policy**, **QBE** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable **QBE** effectively to bring proceedings in the name of the **Insured**.
- (b) If any payment is made under this **Policy** and **QBE** has rights of recovery in relation to such payment, **QBE** agrees not to exercise such rights against any director or **Employee** of the **Insured** unless the **Claim** or loss is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of that director or **Employee**.

ALLOCATION

- 3.10 (a) If both liability from a **Claim** or loss covered by this **Policy** and liability for a **Claim** or loss not covered by this **Policy** arises, either because:
- i. a **Claim** against any **Insured** or a loss includes both covered and uncovered matters; or
 - ii. a **Claim** against any **Insured** is made and others are a party to the proceedings or demand to which the **Claim** relates;
- then the **Insured** and **QBE** shall use their best efforts to agree the allocation of such amount between covered loss and uncovered loss based on a fair and proper assessment of the relative legal and financial exposures.
- (b) Any allocation of **Defence Costs and Expenses** on account of a **Claim** which is negotiated in accordance with sub-clause (a) above shall be applied retrospectively to all **Defence Costs and Expenses** on account of such **Claim**.

SECTION 4: CONDITIONS

LIMIT OF LIABILITY

- 4.1 (a) **QBE's** total liability in respect of any one **Claim** under Clauses 1.1, 1.2(a) and 1.3 and in the aggregate in respect of all **Claims** under Section 1 of the **Policy** including **Defence Costs and Expenses** shall not exceed the **Limit of Liability** as stated in the **Schedule**.
- (b) **QBE's** total liability under Clause 1.2(b) shall not exceed in the aggregate the relevant sub-limit stated in the **Schedule**;
- (c) **QBE's** total liability under Clause 1.4 shall not exceed in the aggregate the relevant sub-limit stated in the **Schedule**;
- (d) The sub-limits referred to in (b) and (c) above shall be included within and not in addition to the **Limit of Liability** as specified in the **Schedule**.

INTERRELATED ACTS

- 4.2 All **Claims** or losses resulting from:
- (a) one and the same act, error or omission; or
 - (b) a series of acts, errors or omissions arising out of or attributable to the same originating cause, source or event; or

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

shall jointly constitute one **Claim** under this **Policy**, and only one **Retention** shall be applicable in respect of such **Claim**.

RETENTION

- 4.3 **QBE** shall only pay in excess of the amount stated as **Retention** in the **Schedule** which amount applies to each and every **Claim** and each and every loss. Such amount includes **Defence Costs and Expenses** and such amount is to be borne by the **Insured** and is not to be insured.

RETROACTIVE COVER

- 4.4 (a) "Unlimited Retroactive Cover" – unless a Retroactive Date is specified in the **Schedule**, coverage under this **Policy** shall be in respect of negligence committed or alleged to have been committed irrespective of when such negligence was committed or alleged to have been committed.
- (b) "Limited Retroactive Cover" – where a Retroactive Date is specified in the **Schedule**, then coverage under this **Policy** shall only be in respect of negligence first committed or alleged to have been first committed after the Retroactive Date.

TERRITORY & LEGAL ACTIONS

- 4.5 This **Policy** shall apply to **Claims** wherever made outside the United States of America or Canada, based upon negligence occurring anywhere in the world.

TAKE-OVER OR MERGER

- 4.6 In the event of a **Take-over or Merger**, this **Policy** shall apply only to any **Claim** by reason of negligence committed by the **Insured** prior to the date of such **Takeover or Merger** unless otherwise agreed by **QBE**.

ALTERATION TO RISK

- 4.7 The **Insured** shall give to **QBE** written notice as soon as practicable of any material alteration to the risk during the **Period of Insurance** including but not limited to:
- (a) the **Insured** going into voluntary bankruptcy, receivership or liquidation or the **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the professional services offered by the **Insured**.

AUTHORISATION

4.8 The **Insured** named in the **Schedule** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice under this **Policy**, including the giving of notice of any **Claim** or loss, the payment of premiums, the receipt and acceptance of any endorsements attaching to and forming part of this **Policy**.

CONFIDENTIALITY

4.9 The **Insured** shall not disclose the terms, Conditions, Exclusions, **Limit of Liability** of this **Policy** or the amount of the premium paid to any third party except to the extent that they are required by law to do so or **QBE** consents, in writing, to such disclosure.

QBE'S RIGHTS

4.10 In the event of **QBE** being entitled to avoid this **Policy** ab initio, **QBE** may at their election instead give notice in writing to the **Insured** that they regard this **Policy** as of full force and effect save that there shall be excluded from any insurance afforded hereunder any **Claim** or loss which has arisen or which may arise and which is related to the circumstances which entitle **QBE** to avoid this **Policy**. This **Policy** shall then continue in full force and effect but shall be deemed to exclude the particular **Claim** or loss referred to in the said notice (as if the same had been specifically endorsed ab initio).

FRAUDULENT CLAIMS

4.11 If the **Insured** shall make any request for payment in respect of any **Claim** or loss knowing the same to be false or fraudulent, as regards amount or otherwise, this **Policy** shall become void and all entitlements to payment in respect of any **Claim** or loss shall be forfeited.

THIRD PARTY RIGHTS

4.12 No party who is not an **Insured** shall be entitled to enforce any term of this **Policy** for its own benefit under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

ARBITRATION

4.13 All disputes which may arise under, out of, in connection with or in relation to this **Policy**, or to its existence, validity or termination, or to the determination of the amount or any amounts payable under this **Policy**, shall be referred to the London Court of International Arbitration (LCIA) in accordance with the Rules of the LCIA at the date of reference, which Rules are deemed to be incorporated by reference into this clause. Should the chosen Tribunal consist of a sole arbitrator, s/he shall be a national of the United Kingdom and of Queen's Counsel practising at the English Bar. The place of arbitration shall be London, the language of the arbitration shall be English and the law applicable to and in the arbitration and governing all disputes shall be English law. In the event that these arbitration provisions shall be held to be invalid all such disputes shall be referred to the exclusive jurisdiction of the courts of England.

- POLICY CONSTRUCTION**
- 4.14 (a) Unless otherwise agreed, the construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law of England.
- (b) The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- (c) In this **Policy** references to any statute shall be to that statute as amended or re-enacted from time to time.
- WAIVER OR AMENDMENT**
- 4.15 The terms of this **Policy** shall not be waived or changed except by endorsement issued by **QBE** or intended to be issued by **QBE** to form part of this **Policy**.
- SUB-CONTRACTORS AND SUB-CONSULTANTS**
- 4.16 Where responsibility for carrying out the **Professional Business** of the **Insured** is divested in others it is the responsibility of the **Insured** to employ its best endeavours to ensure that the party to whom responsibility is divested is suitably qualified to carry out such **Professional Business** and that at the time of their engagement they have in force their own professional indemnity insurance cover which is at least as extensive as the cover afforded under this **Policy**.
- DATA PROTECTION**
- 4.17 **QBE** records and holds data in accordance with the Data Protection Act 1998. **QBE** also follow strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information.
- QBE** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **Policy**.
- Further, by accessing and updating various databases **QBE** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If the **Insured** provide false or inaccurate information and **QBE** suspect fraud this fact will be recorded and the information will be available to other organisations that have access to the databases.
- QBE** can supply details of databases **QBE** access or contribute to on request.
- DOCUMENT MANAGEMENT**
- 4.18 **QBE** may hold documents relating to this **Policy** and any **Claim** or loss 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.

SECTION 5: DEFINITIONS

For the purposes of this **Policy**, the following Definitions apply:

APPLICATION FORM

5.1 “**Application Form**” shall mean the written application or proposal including any attachments made by the **Insured** to **QBE**.

CLAIM

5.2 “**Claim(s)**” shall mean:

- (a) the receipt by the **Insured** of any written or verbal notice of demand for compensation made by a third party against the **Insured**,
- (b) any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured**.

DEFENCE COSTS & EXPENSES

5.3 “**Defence Costs and Expenses**” shall mean the expenses incurred by or on behalf of the **Insured** or **QBE** in the investigation or defence of a **Claim** and shall include legal costs and disbursements.

DOCUMENTS

5.4 “**Documents**” shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

EMPLOYEE

5.5 “**Employee(s)**” shall mean any person employed under a contract of service or apprenticeship during or prior to commencement of the **Period of Insurance**.

INSURED

5.6 “**Insured(s)**” shall mean:

- (a) the company or corporation specified as the **Insured** in the **Schedule** and their predecessors in business; and
- (b) any person who is, during the **Period of Insurance**, a director or **Employee** of any **Insured**; and
- (c) any former directors or **Employees** of the **Insured**; and

- (d) in any event of the death or incompetence or bankruptcy of any director or **Employee** of the **Insured**, such person's estate, heirs, legal representatives or assigns, for legal liabilities incurred due to any negligence of such deceased, incompetent or bankrupt person.

For the avoidance of doubt "**Insured**" shall not include any consultant, subcontractor or agent (not being an **Employee**) of the **Insured**.

LIMIT OF LIABILITY

- 5.7 "**Limit of Liability**" shall mean **Limit of Liability** under this **Policy** as specified in the **Schedule**.

PERIOD OF INSURANCE

- 5.8 "**Period of Insurance**" shall mean the period specified in the **Schedule**.

PROFESSIONAL BUSINESS

- 5.9 "**Professional Business**" shall mean the performance by the **Insured** of any of the professional services listed below in the discharge of a professional duty of care to a third party (other than any sub-consultant, sub-contractor or agent for whom the **Insured** is legally liable) which has been assumed by the **Insured** under a contract with or appointment by such third party in the conduct of the **Insured's** business namely: design; professional specification; inspection of building or construction works; feasibility (other than scientific studies); technical information calculation; procurement; surveying (including quantity surveying); coordination and integration of design; materials measurement which includes testing and/or certification; quality control; testing and commissioning; training and safety management;

POLICY

- 5.10 "**Policy**" shall mean:
 - (a) the **Schedule**, Insuring Clauses, Exclusions, Conditions, Definitions and other terms contained herein; and
 - (b) any endorsement attaching to and forming part of the **Policy** either at inception or during the **Period of Insurance**; and
 - (c) the **Application Form**.

POLLUTANT

- 5.11 "**Pollutant**" shall include but not limited to any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalis, chemical or waste materials (including any materials to be recycled, reconditioned or reclaimed).

QBE

- 5.12 "**QBE**" shall mean QBE Insurance (Europe) Limited.

RETENTION

5.13 “**Retention**” shall mean the amount of **Retention** as specified in the **Schedule**.

SCHEDULE

5.14 “**Schedule**” shall mean the **Schedule** attached to this **Policy**.

SUBSIDIARY

5.15 “**Subsidiary**” shall mean any company in respect of which the **Insured** (either directly or indirectly through one or more of its **Subsidiary Companies**):-

- (a) controls the composition of the board of directors; or
- (b) controls more than half the voting power; or
- (c) holds more than half of the issued share capital.

TAKE-OVER OR MERGER

5.16 “**Take-over or Merger**” shall mean any sale of the **Insured** named in the **Schedule** or its merger with or acquisition by another entity such that the **Insured** is not the surviving entity and no longer:-

- (a) controls the composition of the board of directors; or
- (b) controls more than half the voting power; or
- (c) holds more than half of the issued share capital.

SECTION 6: COMPLAINT PROCEDURE

QBE Insurance (Europe) Limited strives to provide an excellent service to all its customers but occasionally things can go wrong. QBE takes all complaints seriously and endeavours to resolve all customers' problems promptly.

To ensure its service meets customers' expectations all comments received are recorded and analysed to facilitate continuous improvement to its service.

WHAT YOU SHOULD DO?

The steps you should take if you are not satisfied:

1. If you have a question or complaint about this insurance or the conduct of your intermediary please contact your intermediary in the first instance.
2. If you wish to contact **QBE** directly then please contact us at our Head Office as follows:

Managing Director

QBE Insurance (Europe) Limited

Plantation Place,

30 Fenchurch Street,

London, EC3M 3BD

Tel: 020 7105 4000

Fax: 020 7105 4019

Registered in England No. 1761561

Please quote your **Policy** number or claim number as appropriate in any correspondence.

3. If you are still not satisfied please write to the Chief Executive Officer of **QBE Insurance (Europe) Limited** at the above address.

4. If, after making a complaint, you feel that the matter has not been resolved to your satisfaction then if you

- are an eligible complainant you may contact:

The Financial Ombudsman Service

South Quay Plaza 2

183 Marsh Wall

Docklands

London E14 9SR

- are not an eligible complainant then the informal complaint process ceases.

Making a complaint to the Financial Ombudsman Service (FOS) does not affect your rights under this **Policy**.

WHAT QBE WILL DO IF YOU COMPLAIN

Following a full investigation a nominated representative will attempt to resolve your complaint and reply, with a decision, within 5 working days after receipt of your complaint.

In cases requiring a more detailed investigation it may not be possible to reach a decision within this timeframe. If this is the case **QBE** will contact you and provide an estimated date for a decision. In any event this will not be longer than 20 working days from the date of your complaint.

If you remain dissatisfied with the outcome and you write to **QBE's** Chief Executive Officer, you will at this stage receive a final response letter from **QBE**.

If you are still unhappy with the decision you may have a right to refer the complaint to the FOS.

ABOUT THE FINANCIAL OMBUDSMAN SERVICE (FOS)

Eligible complainants are a

- private policyholder, or
- commercial policyholder or charity with a turnover under £1m, or
- trust with assets under £1m

The FOS will only consider a complaint if you are an eligible complainant and if:

- **QBE** have been given an opportunity to resolve it and
- **QBE** have sent you a final response letter and you have referred your complaint to the FOS within 6 months of the QBE final response letter or
- **QBE** have not responded to your complaint with a decision within 40 days.

FINANCIAL SERVICES COMPENSATION SCHEME

The Company Market and Lloyd's underwriters are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the Scheme if **QBE** is unable to meet its obligations under this **Policy**.

Entitlement to compensation under the Scheme depends on the type of business and circumstances of the claim. Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme 7th floor, Lloyds Chambers, Portsoken Street, London E1 8BN or from their website (www.fscs.org.uk).

QBE PI's Head Office and registered address is:

QBE Insurance (Europe) Limited

Plantation Place, 30 Fenchurch Street,

London, EC3M 3BD

Tel: 020 7105 4000 [Fax: 020 7105 4019]

Registered No: 1761561

Home State - United Kingdom

Authorised and regulated by the Financial Services Authority

Registration Number 202842