

# Professional Liability IT Consultants QBE PI Tech International



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# 1 Our agreement in general

## 1.1 Parties to this agreement

This Professional Liability Information Technology Consultants (international) is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

## 1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **insured** in clause 1.1 above, have specific meanings attached to them as set out in clause 5, the General definitions and interpretation section of this document.

## 1.3 Primary purpose of the policy

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

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

1.3.2 pay **defence costs**;

for **claims** including one for breach of a contract for supply of **technology** first made against the **insured** during the **period of insurance** and arising from any negligent act, error or omission incurred by the **insured** in the conduct of the **professional practice**, to the extent more fully defined in clause 2.

## 1.4 Policy structure

1.4.1 Clause 2 sets out the scope of main coverage; additional costs and expenses; extra coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Finally this clause sets out the **insurer's** other terms and conditions.

1.4.2 Clauses 3 - 6 set out the **insurer's**:

- a) claims handling terms and conditions, including conditions precedent;
- b) general terms and conditions, including further conditions precedent;
- c) definitions;
- d) complaints procedure.

## 1.5 Policy period and premium

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

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

1.5.3 If any instalment of premium is not paid and accepted by 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, but that cancellation will be prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

## 1.6 Basis for the policy

- 1.6.1 All information supplied by the **insured** in connection with the application for insurance including any **proposal** form, application form or otherwise and supplied by or on behalf of the **insured** will be incorporated into and form the basis of the **policy**. It shall be a condition of the **policy** that all such information is true so far as is within the **insured's** knowledge or could, with reasonable diligence, have been ascertained.
- 1.6.2 It is a further condition of the **policy** that any material change in, or material addition to, the information mentioned in clause 1.6.1, either before or during the **period of insurance**, shall be notified in writing as soon as practical after the **insured** becomes aware of any such change or addition to the **insurer** who will continue the **policy** on such terms and conditions as it may determine.
- 1.6.3 In the event of a breach of any provision of this clause 1.6, and without prejudice to any other rights of the **insurer**, the **insurer** may reject or reduce claims connected with the breach and continue the **policy** on such terms as it may determine.

## 1.7 Privacy

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

## 1.8 Signature

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

A handwritten signature in black ink, appearing to read "John V. [unclear]", with a horizontal line underneath the signature.

## 2 Insured section – Professional liability

### 2.1 Professional liability cover

#### 2.1.1 Negligent act, error or omission

The **insurer** agrees to indemnify the **insured** and pay compensatory damages or awards (including where applicable claimants' legal costs and expenses) for any **claim**, including one for breach of a contract for supply of **technology**, which is:

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

during the **period of insurance** and notified to the **insurer** in accordance with the terms of this **policy**, and which arises from a negligent act, error or omission incurred by:

- c) the **insured** in the conduct of the **professional practice**; and/or
- d) the **insured** in the conduct of the **professional practice** arising from any negligent act, error or omission 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.

### 2.2 Additional professional liability costs and expenses

#### 2.2.1 Defence costs

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

### 2.3 Professional liability extensions

#### 2.3.1 Breach of confidence and privacy

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

#### 2.3.2 Computer virus transmission

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

2.3.3 **Infringement of Intellectual Property Rights**

The **insurer** will indemnify the **insured** against all sums which the **insured** shall become legally liable to pay as a result of any **claim** against the **insured** during the **period of insurance** alleging unintentional infringement of **intellectual property rights**, including any liability the **insured** has for infringement of **intellectual property rights** under an indemnity in a written contract with a client for the supply of **technology**, committed in good faith.

2.3.4 **Libel and slander**

The **insurer** will indemnify the **insured** against any **claim** first made against them during the **period of insurance** consequent upon any unintentional libel or slander or alleged libel or slander which is unintentional in connection with the **insured's profession**.

2.3.5 **Loss of or damage to documents or data**

The **insurer** will indemnify the **insured** against all sums which the **insured** shall become legally liable to pay in respect of costs and expenses as a result of any **claim** against the **insured** during the **period of insurance** for the replacing or restoring **documents** or **data** that have been permanently lost, damaged, distorted, erased or destroyed provided that the **documents** or **data** are entrusted to or deposited with the **insured** by a third party in the ordinary course of the **insured's** business.

## 2.4 Professional liability limitations and exclusions

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

### 2.4.1 Aircraft, watercraft, vehicles or buildings

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

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

### 2.4.2 Asbestos

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

### 2.4.3 Associated company

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

- a) any **insured** or any **parent** of the **insured** or any **subsidiary**; or
- b) any firm, partnership or entity in which the **insured** or any director or partner of the **insured** has a financial or executive interest;

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

### 2.4.4 Assumed duty or obligation

any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of, or in any way involving any liability, duty or obligation incurred or assumed by the **insured** which is not incurred or assumed in the normal conduct of the **insured's** profession.

### 2.4.5 Bodily injury

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

- a) to or of any **employee** whilst in the course of their employment for or on behalf of the **insured**; and
- b) to any person not being an **employee** unless arising directly from designs, plans specifications, formulae, directions or advice provided on **technology** by the **insured**.

### 2.4.6 Computer virus transmission

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

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

- 2.4.7 **Consequential Loss**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from:
- a) the **insured's** lost profit, mark-up or liability for VAT or its equivalent;
  - b) any trading loss or trading liability including those arising from the loss of any client, account or business
- 2.4.8 **Contractual liability**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from any liability assumed by the **insured** under any express warranty, guarantee or other agreement unless such liability would have attached to the **insured** in the absence of such express warranty, guarantee or other agreement.
- 2.4.9 **Date recognition compliant**  
any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or attributable to, or in any way involving the failure of **technology** to be **date recognition compliant**.
- 2.4.10 **Deliberate or reckless acts of defamation**  
any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of any defamatory statement that was made deliberately or recklessly by the **insured**.
- 2.4.11 **Dishonesty or fraud**  
any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of dishonesty, fraud, malicious or illegal act or omission.
- 2.4.12 **Existing claims**
- a) any **claim**, loss, liability, expenses, costs or **defence costs** made, threatened or intimated against the **insured** prior to the **period of insurance**;
  - b) any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving any fact or **circumstance**:
    - i) of which written notice has been given under any previous policy (whether insured by the **insurer** 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.
- 2.4.13 **Excess**  
the amount of the **excess** stated in the **schedule**.
- 2.4.14 **Finance**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the provision of finance.
- 2.4.15 **Financial services**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time.
- 2.4.16 **Fines, penalties, liquidated damages, punitive, multiple or exemplary damages**  
any fines, penalties, liquidated damages or punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal.

- 2.4.17 **Gaming, gambling or lotteries**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the use or provision of any gaming, gambling or lotteries.
- 2.4.18 **Government prohibition**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising from or alleged to have been caused by or arising from trading with any segment of the economy of a government de jure or de facto, state, or country where any government embargo or sanction prohibits the **insured** from trading with such a government, state or country.
- 2.4.19 **Inherent defect**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from any inherent defect in any **technology** which is supplied by or originate from a third party but this exclusion does not apply to any amount the **insured** can satisfy the **insurer** that they are legally able to recover under a written contract with a third party.
- 2.4.20 **Insolvency of the insured**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of or relating directly or indirectly to the insolvency or bankruptcy of the **insured**.
- 2.4.21 **Internet service provider**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the failure of the service provided by an internet service provider or any telecommunications or other utility provider except when such services are provided by the **insured**.
- 2.4.22 **Known defects**  
any **claims**, loss, liability, expenses, costs or **defence costs** caused by or arising from **technology** known by the **insured** to be deficient, ineffective or incapable of substantially fulfilling the essential purpose for which it is intended or to perform as specified, warranted (whether express or implied), or guaranteed.
- 2.4.23 **Legislation and regulation**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the **insureds** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
- 2.4.24 **Liability arising out of employment**  
arising from the liability to any **employee**, former employee or prospective employee in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.
- 2.4.25 **Limit of indemnity**  
any **claims**, loss, liability, expenses, or costs in excess of the **limit of indemnity** stated in the **schedule**.
- 2.4.26 **Management liability**  
any **claims**, loss, liability, expenses, costs or **defence costs** caused by or arising from any personal liability incurred by a director or officer of the **insured** when acting in that capacity or managing the **insured's** business, or their breach of any fiduciary duty, other than when performing a business activity for a client, or any statement, representation or information concerning the **insured** and the **professional practice** contained in any accounts, reports or financial statements.

- 2.4.27 **Negotiable paper**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
- 2.4.28 **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 (c) above, attributable to:
    - i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
    - ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 2.4.29 **Other insurance**  
where the **insured** is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this **policy** not been effected.
- 2.4.30 **Patent**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising out of the infringement of any patent.
- 2.4.31 **Pension, benefit, trust fund management**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising from the **insureds** operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, of the **insureds** breach of any legalisation or regulation related to these activities.
- 2.4.32 **Pollution**  
any **claims**, loss, liability, expenses, costs or **defence costs** for:
- a) **bodily injury**, sickness, disease or death or loss, damage or loss of use of property directly or indirectly caused by seepage, **pollution** or contamination; and or
  - b) the cost of removing nullifying or cleaning-up seeping, polluting or contaminating substances.
- 2.4.33 **Products liability**  
any **claim**, loss, liability, expenses, costs or **defence costs** directly or indirectly arising out of, or in any way involving goods or products sold, supplied, repaired, altered, treated, manufactured, installed or maintained by the **insured** or by any consultant, sub-contractor or agent of the **insured**, other than **technology**.
- 2.4.34 **Product recall**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of, or in any way involving the withdrawal, inspection, repair, modification or replacement of any **technology** or of any property of which such **technology** form a part, if such **technology** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 2.4.35 **Property damage**  
any **claim**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly out of, or in any way involving **property damage**, unless arising directly from designs,

plans, specifications, formulae, directions or advice provided on **technology** by the **insured**.

2.4.36 **Restricted recovery rights**

any **claim**, loss, liability, expenses, costs or **defence costs** with respect to which the **insureds** rights of recovery from a third party are:

- a) excluded; or
  - b) limited to an amount which is less than the amount claimed against the **insured**;
- by an agreement to which the **insured** is party.

2.4.37 **Retroactive date**

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

2.4.38 **Take-over or merger**

by reason of acts, errors or omissions committed by the **insured** after the date of any **take-over or merger** unless otherwise agreed by the **insurer**.

2.4.39 **Territorial limits**

any **claim**, loss, liability, expenses, costs or **defence costs** arising from or alleged to have been caused by or sustained from an act committed outside the **territorial** limits specified in the **schedule**.

2.4.40 **Tracking devices**

any **claim**, loss, liability, expenses, costs or **defence costs** arising from **technology** that can be used to monitor the activity of any user of such **technology** without their prior knowledge and consent.

2.4.41 **USA/Canadian jurisdiction**

any **claims**, loss, liability, costs of expenses, in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of United States of America, its territories and possessions or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**.

2.4.42 **Unvetted contracts**

any **claims**, loss, liability, expenses, costs or **defence costs** arising directly or indirectly from failure by the **insured** to take reasonable steps before entering into a contract with a client, or extending the scope of an existing contract, to ensure that either the **insured** could provide the required level and quality of **technology** using the resources available to the **insured** or the contract was capable of being performed in accordance with all its terms and any representations made by the **insured** or on the **insured's** behalf.

2.4.43 **War and terrorism**

any **claim**, loss, liability, expenses, costs or **defence costs** of whatsoever nature directly or indirectly caused by, resulting from or in connection with **war** or **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the **claim**.

This exclusion also excludes any **claim**, liability costs, **defence costs** or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

## 2.5 Other professional liability terms and conditions

Not applicable to this **insured section**.

## 2.6 Conditions precedent for professional liability

### 2.6.1 Rectifying problems

It is agreed as a condition precedent to the **insurer's** liability under this insurance that the **insured** will take reasonable steps to remedy and/or rectify, at the **insureds** own expense, any defect or failure in the **technology** supplied by the **insured** to a client arising prior to the clients acceptance of the **technology** or within 180 days of acceptance or any longer period specified in any contract the **insured** has with client, including a maintenance contract.

### 2.6.2 Availability of Source Code

It is agreed as a condition precedent to the **insurer's** liability under this insurance that the **insured** will maintain a current and accurate copy of the **source code material** and in the event of a **claim** against the **insured** will, immediately on demand by the **insurer**, provide to **insurers** such copy of the **source code material** for the exclusive purpose of mitigating and/or determining any loss or liability.

### 2.6.3 Protection of Computer Systems

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

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

Except for clause 3.1.1 a) the due observance and fulfilment of the provisions of this clause 3 is a condition precedent to the **insurer's** liability for any claim under this **policy**. Clause 4.16 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 3.

#### 3.1 Claim notification

3.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurers**:

a) as soon as reasonable practical of any loss, liability, costs or expenses or of any **circumstance**;

b) in any event within fourteen (14) days, of any **claim**;

with full particulars thereof.

3.1.2 The **insurers** agree that any **circumstance(s)** notified to them 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**.

3.1.3 Notice to the **insurer** must be given to the claims notification address specified in the **schedule**.

#### 3.2 Insured's duties in event of a claim

3.2.1 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, nor offer payment or indemnity without the written consent of the **insurer**;

b) not incur any **defence costs** without the consent of the **insurer** except at the **insured's** own cost;

c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently;

d) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;

e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;

f) not destroy evidence or supporting information or documentation without 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**.

#### 3.3 Claim Procedure

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

3.3.1 prove, if it is alleged that by reason of an exclusion of **war** or an act of **terrorism** an event is not covered by this insurance, that the exclusion does not apply, it being understood and agreed that any portion of an exclusion of **war** or an act of **terrorism** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusions invalid, inapplicable or unenforceable.

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

### **3.4 Insurer's rights**

- 3.4.1 Claims will be handled and administered by the **insurer** or such parties as the **insurer** in its absolute discretion may determine.
- 3.4.2 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of opponents' costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.
- 3.4.3 The **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability except (where payable under the relevant **insured section**) for payment of **costs and expenses** incurred prior to the date of payment.
- 3.4.4 The **insurer** may at any time apply to the **insured** for reimbursement for payments made under clause 2 but which do not exceed the **excess**.

### **3.5 Disputed defence or appeal**

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

### **3.6 Subrogation**

- 3.6.1 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 and must assist the **insurer** in all respects in exercising such rights if requested to do so by the **insurer**.
- 3.6.2 The **insured** 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 or of obtaining relief or indemnity from other parties to which the **insurer** will be or would become entitled or subrogated upon its paying for or the making good of any **damage** under this section, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.
- 3.6.3 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.
- 3.6.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that 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.

- 3.6.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled.

### **3.7 Waiver of subrogation against employees**

The **insurer** agrees that it shall not exercise any subrogation rights against an **employee** of the **insured** unless the claim has been brought about or contributed to by the dishonest fraudulent criminal or malicious act or omission of the **employee**.

## 4 General terms and conditions

### 4.1 Adjustment of premium

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.

### 4.2 Applicable law

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

### 4.3 Assignment

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

### 4.4 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 (30th) day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand 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** but subject to adjustment in accordance with clause 4.1 above. 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.

### 4.5 Confidentiality

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

### 4.6 Contract rights of third parties

This insurance does not confer or create any right 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.

### 4.7 Document management

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.

### 4.8 Disclosure under the Data Protection Act 1998

4.8.1 The **insurer** records and holds data in accordance with the Data Protection Act 1998 and follows strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. The **insurer** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **policy**.

- 4.8.2 Further, by accessing and updating various databases the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to are available on request.

## 4.9 Dispute resolution

- 4.9.1 All matters in dispute between the parties arising out of or in connection with this insurance, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of any dispute arising under the insurance. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.
- 4.9.2 The parties agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.
- 4.9.3 If any such dispute is not resolved by mediation or the parties can not agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the exclusive jurisdiction of the High Court, London.

## 4.10 Fraud

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

Further any claim paid to the **insured** in respect of any fraudulent means or device must be repaid to the **insurer**.

## 4.11 Inspection and audit

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 given reasonable notice. 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.

## 4.12 Interrelated acts

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

- 4.12.1 one and the same act error or omission; or
- 4.12.2 a series of acts errors or omissions arising out of or attributable to the same originating cause, source or event; or
- 4.12.3 the acts errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated; shall jointly constitute one claim under this **policy**, and only one **excess** shall be applicable in respect of such claim.

## 4.13 Material alteration

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

4.13.1 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;

4.13.2 any material change in the nature of the **professional** services offered by the **insured**.

#### **4.14 Minimisation of risk**

4.14.1 The **insured** will take all reasonable steps to avoid agreeing in any contract with a client to:

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

4.14.2 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 such reasonable measures as are appropriate to minimise any claims which arise or may arise from that insured event.

#### **4.15 Observance**

4.15.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already 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.

4.15.2 Further where an indemnity is provided to another 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 providing always that the other party complies with the terms of clause 3 (Duties in the event of a claim or potential claim).

4.15.3 In the event of a breach of any provision in the policy other than breach of the **insured's** duty of disclosure, and without prejudice to any other rights of the **insurer** the **insurer** may reject or reduce claims connected with the breach providing the **insurer** can demonstrate some prejudice, and continue the **policy** on such terms as it may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

#### **4.16 Representation**

Any person falling within the definition of the **insured** agrees that the **practice** is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to the **practice**.

#### **4.17 Subscribing insurer**

The **insurers'** obligations under this **policy** are several 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 reasons does not satisfy all or part of its obligations.

## 5 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 5.1 Bodily injury

Bodily injury means death and injury, illness or disease whether bodily or mental.

### 5.2 Circumstance(s)

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

### 5.3 Claim

Claim means:

- 5.3.1 the receipt by the **insured** of any written or verbal notice of demand for compensation made by a third party against the **insured**;
- 5.3.2 any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;
- 5.3.3 any notice of intention, whether orally or in writing, to commence legal proceedings against the **insured**.

### 5.4 Computer Virus

Computer virus means any computer program, including but not limited to, any file virus, boot sector virus, macro virus, hostile applet, Trojan horse program, java virus, ActiveX virus or other executable program which contains instructions to initiate an event on the infected computer, causing modification of or damage to data, memory or data media or otherwise adversely affecting the operation of any information and communications technology system.

### 5.5 Date recognition compliant

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

- 5.5.1 no value for current date will cause or give rise to any interruption in the operation;
- 5.5.2 date-based functionality must behave consistently;
- 5.5.3 in all interfaces data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules;
- 5.5.4 any leap year must be recognised as a leap year.

### 5.6 Defence cost(s)

Defence cost(s) means all legal costs and expenses incurred with the prior written and continuing consent of the **insurer** (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or

settlement of any **claim** and/or **circumstance(s)**. It does not include the **insured's** own costs and expenses.

## 5.7 Documents / data

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

## 5.8 Employee

Employee means any person including trainees and consultants acting under a contract of service with the **insured** in respect of the conduct of **professional** business by the **insured**.

## 5.9 Excess

The **limit of indemnity** is additional to the excess and excess means the first amount specified in the **schedule** payable by the **insured** in respect of each and every **claim, series of claims** or **circumstance** as ascertained after the application of all other terms and conditions of this insurance. The excess will include and be applied to **defence costs**.

## 5.10 Insured

Insured means:

- 5.10.1 the **practice**;
- 5.10.2 the partners and/or directors and/or members of the **practice** during the **period of insurance**;
- 5.10.3 former partners and/or former directors and/or former members of the **practice**;
- 5.10.4 in respect of the **profession** undertaken on behalf of the **practice** only those persons named as consultants or former consultants in the **proposal**;
- 5.10.5 any retired partner, director or member of the **practice** remaining as a consultant to the **practice**;
- 5.10.6 the estate, heirs and executors and/or legal/personal representatives of those parties mentioned in above in the event of their death, incapacity, insolvency or bankruptcy for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

## 5.11 Insured section

Insured section means clause 2.

## 5.12 Insurer

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers.

## 5.13 Intellectual property rights

Intellectual property rights means copyright, trademark, design (including in respect of semiconductor topographies), moral rights or any act of passing-off.

## 5.14 Limit of indemnity

5.14.1 Limit of indemnity means the amount specified in the **schedule** which shall be maximum amount payable by the **insurer** for any one claim under the **policy** and in the aggregate during any one **period of insurance** inclusive of **defence costs** regardless of the number of insured parties, persons or organisations bringing **claims** against the **insured** unless expressly provided otherwise.

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

## 5.15 Parent

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

5.15.1 controls the composition of the board of directors, of the **insured**; or

5.15.2 controls more than half the voting power of the **insured**; or

5.15.3 holds more than half of the issued share capital of the **insured**.

## 5.16 Period of insurance

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

## 5.17 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.

## 5.18 Pollutant

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

## 5.19 Pollution

Pollution means:

5.19.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;

5.19.2 any cost, expense, claim or **suit** arising out of any request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that 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**.

## 5.20 Practice

Practice means the practice or practices named in the **schedule** and their predecessors and any other practices but excluding all those practices, predecessors or other practices that are not disclosed to **insurers** in the **proposal**.

## 5.21 Profession(al)

Profession(al) means the performance by the **insured** of professional services as specified in the **schedule**, in the conduct of the **insured's** business whereby the **insured** pursues their profession and which is conducted for the **practice** under the name specified as the **insured**. It is agreed that the **insurer** will not deny indemnity

hereunder if the **practice** should change its name and there is no other change that materially alters the risk.

## 5.22 **Property damage**

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

## 5.23 **Proposal**

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

## 5.24 **Retroactive date**

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

5.24.1 Unlimited retroactive cover – where no retroactive date is specified in the **schedule**, coverage under this **policy** shall be in respect of acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed or alleged to have been committed;

5.24.2 Limited retroactive cover – where a retroactive date is specified in the **schedule**, then coverage under this **policy** shall only be in respect of acts, errors or omissions first committed or alleged to have been first committed after the retroactive date;

## 5.25 **Schedule**

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **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.

## 5.26 **Series of claims**

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

## 5.27 **Source code material**

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

## 5.28 **Subsidiary**

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

5.28.1 controls the composition of the board of directors; or

5.28.2 controls more than half the voting power; or

5.28.3 holds more than half of the issued share capital.

## 5.29 Take-over or merger

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

5.29.1 controls the composition of the board of directors; or

5.29.2 controls more than half the voting power; or

5.29.3 holds more than half of the issued share capital,

and includes, in the case of an **insured** which is a partnership, a merger with another partnership or the appointment of new partners (other than from existing **employees** of the partnership **insured**) such that the number of partners in the partnership immediately after such merger or appointment(s) is more than two hundred percent (200%) of the number of partners in the partnership **Insured** immediately before such merger or appointment(s).

## 5.30 Technology

Technology shall mean:

5.30.1 any software, hardware, firmware, cabling or electronic equipment; and / or

5.30.2 any service, advice or work provided by the **insured** in the conduct of the **profession** in relation to or in connection with any of the matters referred to in clause 5.30.1 and including without limitation, data processing, data warehousing, facilities management and outsourcing, telecommunication and data communication, website design and web-hosting services provided by the **insured**.

## 5.31 Territory (territorial)

Territory (territorial) means the territory specified in the **schedule**.

## 5.32 Terrorism

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to:

5.32.1 intimidate or coerce a civilian population, or

5.32.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or

5.32.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or

5.32.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

## 5.33 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, nationalisation, requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

## 6 Complaints

### 6.1 What the insured should do?

The **insurer** strives to provide an excellent service to all its customers but occasionally things can go wrong. The **insurer** takes all complaints seriously and endeavours to resolve all customers' problems promptly.

If the **insured** has a question or complaint about this insurance or the conduct of its intermediary they will contact that intermediary in the first instance.

If the **insured** wishes to contact the **insurer** directly the **insured** should write to the complaints address shown in the schedule.

Please quote the **policy** number or claim number as appropriate in any correspondence.