



POLICY WORDING

PROFESSIONAL INDEMNITY INSURANCE FOR TECHNOLOGY AND COMMUNICATIONS POLICY DOCUMENT



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1. ABOUT YOUR POLICY

This Policy has been produced by Pen Underwriting Limited a Managing General Agent of the Insurer). The Insurer have delegated authority to Pen Underwriting Limited to underwrite Insurance for You on their behalf.

Your Policy is made up of Sections prepared from a proposal form or declaration or statement of fact provided by **You** or from **Your** instructions or any information in connection with this insurance provided to Pen Underwriting or the Insurer or **Your** insurance adviser.

This policy wording explains the insurance provided under this contract.

Each Section may include terms Definitions Conditions and Exclusions unique to the Section which should to be read in conjunction with the Policy Definitions, Conditions and Exclusions.

An Endorsement forms an addition to the Section and varies the insurance provided by the Section.

The Schedule or Appendix and any Endorsement should be read together for precise details of **Your** insurance protection.

Please take care to review all documentation carefully to ensure that the information provided accurately reflects **Your** circumstances and that the cover provided suits **Your** requirements.

You should pay particular attention to any terms conditions limits and exclusions including endorsements which may require **You** to take action.

Duty of Fair Presentation

This Policy is a contract between **You** and the Insurer.

Please read the whole document carefully. It is arranged in different sections. It is important that

- **You** are clear which sections **You** have requested and want to be included;
- **You** understand what each section covers and does not cover;
- **You** understand **Your** own duties under each section and under the insurance as a whole.

Please contact **Your** broker immediately if this Document is not correct or if **You** would like to ask any questions.

Important Notice: The **Insured** is required to make a fair presentation of the risk to Insurers.

If the **Insured** breaches its duty to provide a fair presentation and any such breach was deliberate or reckless, Insurers may regard the Policy as void and are not required to return any paid Premium to the **Insured**.

If the breach was not deliberate or reckless, Insurers' remedy shall depend upon what Insurers would have done if the **Insured** had complied with the duty of fair presentation:

1. Insurers may regard the Policy as void if Insurers would not have entered into the Policy on any terms in the absence of the breach. In this case, the Insurers must return the premium paid.
2. If the Insurers would have entered into the Policy, but on different terms (other than terms relating to premium) the Policy is to be treated as if those different terms applied from the outset, if the Insurer so requires.
3. If the Insurers would have entered into the Policy but would have charged a higher premium the Insurers may reduce proportionately the amount to be paid on a **Claim** (and, if applicable, the amount already paid on prior claims).

Where: (i) there has been a failure to comply with a term (express or implied) of this Policy, other than a term which defines the risk as a whole; and (ii) compliance with such term would tend to reduce the risk of loss of a particular kind and/or loss at a particular location and/or loss at a particular time, the Insurer cannot rely on the breach of such term to exclude, limit or discharge its liability if **You** show that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred

If **You** breach any warranty in this Policy, the Insurer's liability under the Policy shall be suspended from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Insurer will have no liability to **You** for any loss which occurs, or which is attributable to something happening, during the period when the Insurer's liability is suspended.

Authorised Signatory
Jonathan Turner



Complaints

At Pen Underwriting, it is always **our** intention to provide a first class standard of service. However, it is appreciated that occasionally things go wrong. In a majority of cases the agent who arranged the insurance will be able to resolve any concerns and **You** should contact them directly in the first instance.

Alternatively **You** can complain by contacting Pen Underwriting Limited (as per the contact details below) quoting **Your** Policy and/or **Claim** number. **We** will investigate **Your** concerns and provide a response as soon as possible.

Address:
Pen Underwriting Limited Complaints
7th Floor Spectrum Building
55 Blythswood Street
Glasgow
G2 7AT

Telephone: 0141 285 3539
Email: pencomplaints@penunderwriting.com

You can also contact **Your** Insurer, contact details can be found in the Schedule.

Should **You** remain dissatisfied having received a Final Response to **Your** complaint and **You** fit the definition of an 'eligible complainant', **You** may then be able to refer **Your** complaint to the Financial Ombudsman Service (FOS). Please note that the FOS allow 6 months from the date of the Final Response to escalate **Your** complaint to them. Further details on eligibility and the referral process can be found on the FOS Website.

Address:
The Financial Ombudsman Service
Exchange Tower
London
E14 9SR

Telephone: 0800 0234567 (for landline users)
Telephone: 0300 1239123 (for mobile users)
Email: complaint.info@financial-ombudsman.org.uk
Website: www.financial-ombudsman.org.uk

Compensation Scheme

The providers of this insurance as defined in this Policy are covered by the Financial Services Compensation Scheme (FSCS). If they cannot meet their obligations **You** may be entitled to compensation under this scheme depending on the type of insurance and the circumstances of the **Claim**

You are covered for 90 per cent of the **Claim** without any upper limit. However, for compulsory classes of insurance **You** are covered for 100 per cent of the **Claim** without any upper limit.

How To Make A Claim

At Pen Underwriting, **we** understand that claims form a critical component of **our** offering the moment the Policy becomes tangible and **we** are relied upon to deliver upon **our** commitment to **You**.

Pen Underwriting have assembled an experienced team who embody **our** three key principles of:

- 1) **Partnership** – working together to achieve the optimum outcome to the **Claim**
- 2) **Expertise** – **we** employ staff and engage service providers who are experts in their field
- 3) **No-nonsense** – **we** apply a flexible and proactive approach to the claims process

For details on how to notify **Your Claim**, please refer to **Your** Schedule.

The Law That Governs This Policy

Unless the parties have agreed otherwise in writing any dispute concerning the interpretation of this Policy shall be governed and construed in accordance with English law and shall be resolved within the exclusive jurisdiction of the courts of England and Wales.

Data Protection

Pen Underwriting Limited are the data controller of any personal information you provide to us or personal information that has been provided to us by a third party. We collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, brokers, reinsurers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

We may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please see our Privacy Policy - <https://www.penunderwriting.co.uk/Privacy-and-Cookies>. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

2. DEFINITIONS

Certain words in this policy have special meanings. These meanings are given below and apply where the words appear in bold.

Asbestos Surveys

A management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006 or any comparable survey or inspection whether of commercial or residential land or property.

Business

The professional services provided in the conduct of the business stated in the schedule.

Business partner

Any person in **business** with **you** under the terms of a partnership agreement whether express or implied under legislation.

Circumstance

Incident, occurrence, fact, matter, act or omission that may give rise to a **claim**.

Claim

Demand for or an assertion of a right to civil compensation or civil damages or an intimation of an intention to seek such compensation or damages.

Credit Monitoring Costs

Reasonable charges, costs, expenses and fees necessarily incurred with **our** prior written consent to monitor any account of those affected by the loss of any personal information for a period not exceeding 12 months from the date **you** first had knowledge of a **privacy event**.

Cyber Extortion Threat

An illegal demand from a **third party** excluding any demand from any **employee** for payment to prevent them from:

- a) launching a **denial of service attack** against **you**
- b) introducing **malware** into **your** network
- c) revealing personal information following any **unauthorised access**.

Data

Information stored or transmitted in digital format.

Defence costs

Reasonable charges, costs, expenses and fees necessarily incurred with **our** written consent in the investigation, defence or settlement of any **claim** or investigation into any

circumstance which may be the subject of indemnity under this policy.

Denial of Service Attack

Any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems including but not limited to the generation of excess network traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

Electromagnetic Field

Any field of force that is made up of associated electric and magnetic components.

Electromagnetic Radiation

Any succession of electromagnetic waves.

Electromagnetism

Magnetism that is developed by a current of electricity.

Employee

Any natural person who is:

- a) under a contract of service or apprenticeship with **you**
- b) a labour master or labour only subcontractor or persons supplied by any of them
- c) self-employed
- d) under a work experience or similar scheme
- e) hired or borrowed by **you** from another employer

and working for **you** in connection with the **business** while under **your** direct control or supervision.

Environmental Audit

Any investigation specifically intended to assess whether there is actual **pollution or contamination** present.

Excess

The amount stated in this policy, the schedule or any endorsement in respect of each and every **claim** for which **you** will be responsible.

Extortion Expenses

Reasonable costs necessarily incurred by **you** following any **cyber extortion threat** where such costs are insurable at law.

Insured

Firm, partnership, unincorporated organisation or the company stated in the schedule as the insured and **your** predecessors including:

- a) any current or former **business partner**, director, **member** or principal or any person who becomes a **business partner**, director, **member** or principal during the period of insurance
- b) any current or former **employee** or any person who becomes an **employee** during the period of insurance
- c) the personal representative of any **business partner**, director, **member**, principal or **employee** in the event of their death, incapacity, insolvency or bankruptcy
- d) any retired **business partner**, retired director or retired **member** whilst acting as a consultant to the insured.

Intellectual Property Rights

Copyright, trademark, database rights, design right or registered domain name but does not include patent or trade secret.

Malware

Any code specifically designed to:

- a) erase or corrupt **data**
- b) damage or disrupt any network or system
- c) circumvent any security product or service.

Member

A member of **your** limited liability partnership as defined in the Limited Liability Partnerships Act 2000.

Notification Costs

Reasonable charges, costs, expenses and fees necessarily incurred with **our** prior written consent in advising any individual of the compromising of any personal information.

Nuclear Installation

Any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument being an installation designed or adapted for:

- a) the production or use of atomic energy
- b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation
- c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

Nuclear Reactor

Any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

Personal Information

Any information from which an individual may be uniquely and reliably identified or contacted including an individual's name, telephone number, national insurance number, social security number, medical or healthcare data or other protected health information, driver's licence number or passport number, account number, credit card number, debit card number, access code or password that would permit access to that individual's financial account or any other non-public personal information as defined in **privacy regulation**. Personal Information does not include information lawfully available to the general public for any reason including information from national or local government records.

Pollution or Contamination

Pollution or contamination of buildings or other structures or of water or land or the atmosphere.

Privacy Breach Costs

Reasonable charges, costs, expenses and fees necessarily incurred by **you** with **our** prior written consent within 12 months of **you** first having knowledge of a **privacy event** for the purposes of retaining an accountant, IT consultant, solicitor, lawyer, public relations consultant or other third party to:

- a) conduct a computer forensic analysis to investigate **your** computer system to determine the cause and extent of such **privacy event**
- b) determine the extent to which **you** are obligated to notify any regulatory authority following any **privacy event**
- c) effect compliance with any **privacy regulation** under the applicable **privacy regulation** most favourable to **your** affected individuals
- d) plan, implement, execute and manage a public relations campaign to counter or minimise any actual or anticipated adverse effects of negative publicity from such **privacy event** or to protect or restore **your business** reputation in response to negative publicity following such **privacy event**.

Privacy breach costs do not include:

- i) regular or overtime wages, salaries or fees of any **employee**
- ii) the cost to comply with any injunctive or other non-monetary relief
- iii) principal, interest or other monies paid or due as the result of any loan, lease or extension of credit, taxes, fines, sanctions or penalties.

Privacy Event

- a) An accidental disclosure or loss of:
 - i) personal information in your care, custody or control
 - ii) corporate information in **your** care, custody or control that is specifically identified as confidential and protected under a non-disclosure agreement or similar contract
- b) a violation of any **privacy regulation**.

Privacy Regulation

Any legislation enacted to control the use of personal information within the **territorial limits**

Products

Hardware, firmware, software or other electronic device or component designed or manufactured by **you** or any such items that have been installed, supplied or sold by **you**.

Property

Physical property.

Regulatory Privacy Fines and Penalties

Civil fines, penalties or sanctions imposed as a direct result of any **privacy event** solely where such fines, penalties or sanctions are insurable at law.

Related entity

Any individual or entity or its subcontractors or assignees:

- a) which wholly or partially own, operate or manage **you**
- b) in which **you** have an ownership interest in excess of 20%
- c) which is controlled, operated or managed by **you**.

Services

Any advice, design or work on any specification performed by any **insured** or on **your** behalf for a fee or for which a fee would ordinarily be charged.

Subcontractor

Any independent consultant or subcontractor other than an **employee** who provides **you** with services under a written contract.

Third Party

Any natural person, firm, individual, partnership, organisation or corporation other than **you** but not any **related entity** or any other person or entity having a financial or executive interest in **you**.

Territorial limits

Worldwide.

Terrorism

- a) Any act or preparation in respect of action or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:
 - i) involves violence against one or more persons
 - ii) involves damage to property
 - iii) endangers life other than that of the person committing the action
 - iv) creates a risk to health or safety of the public or a section of the public
 - v) is designed to interfere with or to disrupt an electronic system
- b) any action in controlling, preventing, suppressing, retaliating against or responding to any act or preparation in respect of action or threat of action described in a) above.

Unauthorised Access

Access to or use of **your** computer system or network infrastructure by any person not authorised to do so.

We, Us, Our or Ours

Zurich Insurance plc.

You, Your, Yours or Yourselves

The person, people either acting in partnership or on behalf of an unincorporated organisation or the company stated in the schedule as the **insured** including **your** predecessors.

3. THE COVER

We will indemnify any **insured** in respect of any **claim** first made against any **insured** and notified to **us** during the period of insurance in respect of any civil liability including liability for claimants' costs and expenses arising out of the conduct of the **business** within the **territorial limits**.

In addition to the limit of indemnity **we** will pay **defence costs**.

Defence costs and any payment under clauses 3.2, 3.4, 3.6, 3.10 and 3.11 will not be subject to any **excess**.

Where **you** become liable to pay a sum in **excess** of the amount of indemnity available under this policy **we** will pay only the proportion of any **defence costs** that the amount of indemnity available under this policy bears to **your** total liability.

3.1 Costs of Criminal Proceedings

We will also indemnify **you** against reasonable legal costs and expenses necessarily incurred with **our** prior consent in the defence of any criminal proceedings first made against **you** and notified to **us** during the period of insurance under:

- a) the Bribery Act 2010
- b) the Construction (Design and Management) Regulations 2015
- c) the Corporate Manslaughter and Corporate Homicide Act 2007
- d) the Health and Safety at Work etc Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978
- e) any statutory or secondary legislation implementing the Council Directive 92/57/EEC or similar legislation enacted elsewhere in the world.

Provided always that:

- i) the criminal proceedings arise out of the conduct of the **business**; and
- ii) the circumstances giving rise to such criminal proceedings may otherwise give rise to an indemnity under this policy; and
- iii) in **our** reasonable belief the defence of such criminal proceedings would assist in the defence of any **claim** against any **insured**.

Any subsequent or concurrent civil action arising out of criminal proceedings notified hereunder will be deemed to be notified in accordance with condition 3.

For the purpose of this clause the **excess** will be £2,500 or the **excess** stated in the schedule whichever is the lesser.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.2 Court Attendance Costs

We will also pay **you** the daily rates stated below if any of these people are required to attend court as a witness at **our** request:

- | | |
|---|------|
| a) any business partner , director, member or principal | £500 |
| b) any employee | £250 |
| c) any other relevant party excluding any expert witness | £250 |

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.3 Extended Reporting Period

In the case of renewal of this policy by **us we** agree to accept **your** notification of any **circumstance** or **claim** under this policy up to 30 days after the previous period of insurance has expired provided always that **you** first become aware of the **circumstance** or **claim** during the last 30 days of the previous period of insurance.

In the case of non-renewal of this policy by **us you** will have the right to extend cover for a further 12 months but only:

- a) for any **claim** arising out of the provision of **products** or **services** rendered by **you** within the **territorial limits** and that occurred before the expiration of the last period of insurance; and
- b) for a limit of indemnity no greater than that stated in the schedule.

If **we** issue a renewal quotation it will not be considered a non-renewal by **us** even if the renewal terms differ substantially from the expiring cover.

The premium payable for any extension of cover will be determined by **us** at **our** discretion.

Written notice from **you** exercising this right to extend cover must be received by **us** no later than 7 days after the expiry of the period of insurance.

3.4 First Party Copyright Infringement

We will also pay any reasonable costs and expenses necessarily incurred in the issue of any proceedings notified to **us** during the period of insurance for any

injunction or for damages for infringement of any copyright vested in **you** provided always that **we** will not be required to incur any obligation to meet such costs where **your** cause of action is not one that is reasonable to pursue.

In the event of any dispute arising between **you** and **us** as to the reasonableness of pursuing any such cause of action the opinion of a Queen's Counsel the appointment of whom will be mutually agreed between **you** and **us** will be obtained and their decision will be binding.

If **you** and **us** cannot agree on the appointment of a Queen's Counsel the chairman of the Bar Council will appoint one.

Our liability will not exceed £35,000 in the aggregate during the period of insurance.

3.5 Information Technology Liability

We will also indemnify **you** in respect of all sums which **you** become legally liable to pay as damages and claimants' costs and expenses and **defence costs** in respect of a **claim** arising due to:

- i) any breach of a contract to provide **products** or **services** due to such **products** or **services** not conforming to a previously agreed written specification
- ii) the failure of such **products** or **services** to meet any express or implied statutory term concerning quality, fitness for purpose or safety
- iii) any actual or alleged negligent act, error or omission in the provision of **products** or **services**
- iv) loss, erasure or corruption of **data** for which **you** are responsible under a written contract
- v) unintentional infringement of any **intellectual property right**
- vi) defamation of any individual, commercial enterprise, product or system
- vii) any other civil liability but excluding contractual liability beyond that specified above.

3.6 Loss of Documents

We will also pay reasonable costs necessarily incurred by **you** with **our** prior consent for the restoration or replacement of records associated with the **business** including computer systems records which have been accidentally lost or damaged. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location. This clause does not apply to negotiable instruments of whatsoever nature.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during

the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.7 Fee Costs

We may also at **our** discretion pay **your** outstanding fee in circumstances where **your** client has expressed dissatisfaction with **your** work and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fee (including amounts **you** are legally obligated to pay **subcontractors** at the time of the refusal to pay such fee) and threatens to bring a **claim** against **you** for a sum greater than the outstanding fee but agrees not to pursue such **claim** if **you** agree not to press for **your** outstanding fee.

Our payment of **your** outstanding fee will only be made if **we** believe that this will avoid a **claim** for a greater amount. If following this a **claim** still arises then the amount paid under this clause will be deducted from the limit of indemnity. If **you** eventually recover the outstanding fee or any part thereof then **you** must repay **us** any amount **you** recover less **your** reasonable expenses necessarily incurred in recovering the outstanding fee.

3.8 Network Security Liability

We will also indemnify **you** in respect of all sums which **you** become legally liable to pay as damages and claimants' costs and expenses and **defence costs** in respect of a **claim** arising due to:

- a) breach of confidence
- b) negligent or inadvertent onward transmission of any **malware**
- c) inability of any **third party** with whom **you** have a written contract to access **your** network or **services** due to inadequate bandwidth, server capacity or other negligent act of **you**
- d) negligent failure to secure **your** computer system or network infrastructure which results in **unauthorised access**.

3.9 Privacy Liability

We will also pay reasonable costs necessarily incurred by **you** with **our** prior written consent for:

- a) privacy breach costs
 - b) notification costs
 - c) credit monitoring costs
 - d) regulatory privacy fines and penalties
- following any **privacy event**
- e) **extortion expenses**.

Provided always that:

- i) **you** make all reasonable efforts to

contact the police or other relevant law enforcement bodies or authorities before **we pay extortion expenses**

- ii) one of **your** directors consents to the payment of **extortion expenses**

solely in the performance of the **business** by **you** or any **subcontractor**.

Our liability will not exceed the inner limits of indemnity stated in the schedule in the aggregate during the period of insurance and these limits will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.10 Representation Costs

We will also pay reasonable costs and expenses necessarily incurred by **you** with **our** written consent for representation at any official examination, inquiry, investigation or other proceedings ordered or commissioned by a body legally empowered to investigate **your** affairs that is first instigated against **you** and notified to **us** during the period of insurance and which may give rise to a **claim** under this policy.

Our liability will not exceed £35,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.11 Reputation Rebuild Protection

We will also cover any reasonable costs and expenses incurred with **our** written consent to employ a public relations consultancy to avert or mitigate any damage to **your** reputation. This cover will only apply where damage to **your** reputation arises out of an act error or omission which results in a **circumstance** or **claim** which is notified to **us** during the period of insurance and for which cover is provided under this policy.

Our liability will not exceed £10,000 in the aggregate during the period of insurance.

4. EXCLUSIONS

This policy does not cover:

1. Asbestos

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the conduct of the **business**.

Provided always that:

- a) this policy will not cover liability for:
 - i) **asbestos surveys**
 - ii) death, bodily injury, mental injury, sickness, disease, mental anguish, shock or the fear of suffering thereof sustained by any person
- b) **our** liability including **defence costs** will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

2. Bodily Injury and Property Damage

liability for:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from libel or slander
- b) loss of or damage to **property**

unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by any **insured**

3. Claims by Related Entities

any **claim** brought by any **insured** or any **related entity** unless such **claim** emanates from an independent **third party**

4. Competition, Restraint of Trade or Taxation

liability arising from the breach of any taxation, competition, restraint of trade or antitrust legislation or regulation

5. Contractual Liability

liability arising under any express warranty, express guarantee or under any contractual obligation to the extent that the obligation gives rise to a **claim** for which **you** would not have been liable in the absence

of the express warranty, express guarantee or contract other than any **claim** specifically covered under clause 3.5 a), b), c), d) or e)

6. Criminal or Malicious Acts

liability arising out of any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **insured** or on the direction of any **business partner**, director, **member** or principal unless:

- a) committed by any **employee** which for the purpose of this clause will not include any **business partner**, director, **member** or principal of **yours**; and
- b) there was no reasonable cause for suspicion by any **business partner**, director, **member** or principal in relation to such person.

Provided always that:

- i) in the event of a loss being sustained as a result of any criminal, dishonest, fraudulent or malicious act, error or omission the amount of indemnity under this policy will be reduced by an amount equal to the sum of:
 - 1) any monies owed by **you** to any person committing, condoning or contributing to the act or omission
 - 2) any monies held by **you** and belonging to such person; and
- ii) no person committing, condoning or contributing to any criminal, dishonest, fraudulent or malicious act, error or omission is entitled to an indemnity under this policy

7. Directors' and Officers' and Trustee Liability

liability while any **insured** is carrying out the duties of:

- a) a director or officer of **you** or any other body corporate
- b) a trustee of any pension fund or any other employee benefit scheme

8. Electromagnetic Field, Radiation or Electromagnetism

liability arising directly or indirectly out of **electromagnetic field**, **electromagnetic radiation** or **electromagnetism**

9. Employment

liability arising out of:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any **business partner**, director, **member**, principal

or **employee** while in the course of their employment with **you**

- b) any obligation owed by **you** as an employer or potential employer to any director or **employee** or applicant for employment
- c) any express or implied terms of a partnership agreement or membership agreement

10. Failure to Assess Cost

liability or loss resulting from **your** failure or any other party acting on **your** behalf to make an accurate pre-assessment of the cost of providing **products** or **services**

11. Financial Analysis

liability directly or indirectly based upon, attributable to, arising out of, or resulting from or in any manner related to the rendering of or failure to render any:

- a) valuation of any stock, bond or negotiable instrument
- b) economic analysis whether computer assisted or not
- c) economic and or financial forecasting whether computer assisted or not
- d) economic and or financial simulations whether computer assisted or not
- e) electronic transfer or electronic manipulation of negotiable instruments
- f) transfer of money or funds

unless such liability relates directly and exclusively to the failure of any **products you** have supplied to any **third party**

12. Foreign Operations

any associated or subsidiary company of **yours** or branch office or representative of **yours** with power of attorney domiciled outside Great Britain, Northern Ireland, the Isle of Man and Channel Islands unless otherwise named on the schedule

13. Goods and Services

liability arising from any contract or arrangement for the supply to or use by **you** of goods or services

14. Insolvency

liability arising out of **your** or any of **your** suppliers' or **subcontractors'** insolvency or bankruptcy.

This exclusion will not apply to any **circumstance** or **claim** that may be covered under this policy but for **your** or any of **your** suppliers' or **subcontractors'** insolvency or bankruptcy

15. Libel and Slander

liability arising out of any act of libel or slander other than that committed or uttered in good faith by any **insured**

16. Non-Negligent Delay

liability arising out of, based upon, attributable to or as a consequence of a delay or non-completion of any contractual obligation where such delay was not caused by an actual or alleged negligent act, error or omission that would ordinarily be covered by this policy

17. Nuclear and War Risks and Government or Public Authority Order

death, injury, disablement or loss or damage to any property or any loss or expense resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any **nuclear installation, nuclear reactor** or other nuclear assembly or nuclear component thereof
- c) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- d) war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power
- e) nationalisation, confiscation, requisition, seizure or destruction by any government or public authority

18. Obscenity

liability arising from any obscenity, blasphemy or pornographic material

19. Patents

any **claim** arising directly or indirectly out of, based upon, attributable to or in any way connected with any actual or alleged misappropriation, infringement or violation of any patent or trade secret

20. Pension Liability

liability arising out of the operation or administration of **your** pension or other **employee** benefit scheme

21. Pollution or Contamination

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of:

- a) **pollution or contamination** unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the conduct of the **business**
- b) any **environmental audit**.

Our liability including **defence costs** will not exceed the limit of indemnity in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

22. Prior Circumstances and Claims

liability arising from:

- a) any **circumstance** that:
 - i) **you** knew or that in **our** reasonable opinion **you** ought to have known prior to inception of this policy which may give rise to a **claim** against any **insured**
 - ii) was notified by **you** under any other insurance policy prior to inception of this policy
 - iii) was disclosed or in **our** reasonable opinion ought to have been disclosed on **your** latest proposal to **us**
- b) any **claim** made against any **insured** prior to inception of this policy

23. Products and Buildings

liability arising out of any:

- a) supply, repair, alteration, manufacture, installation or maintenance of goods, materials or **products** other than any **claim** specifically covered under clause 3.5 a), b) or c)
- b) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures

by any insured, subcontractor or related entity

24. Property and Transport

liability arising out of the ownership, possession or use by **you** or on **your** behalf of any land, building, aircraft, watercraft, mechanically propelled vehicle or trailer

25. Punitive or Exemplary Damages

any amount in respect of punitive or exemplary damages unless arising out of libel or slander committed or uttered in good faith

26. Recall Costs

liability for all reasonable charges, costs, expenses and fees necessarily incurred in the recall, repair or

replacement of any **products** or the refund of any money paid by a **third party** in connection with the recall of any **products**

27. Retroactive Date

liability for any **claim** arising from the conduct of the **business** prior to the retroactive date stated in the schedule

28. Terrorism

loss, damage, consequential loss, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with **terrorism**.

In any action or suit or other proceedings where **we** allege that by reason of this exclusion cover is not provided under this policy the burden of proving that cover is provided under this policy will be upon **you**

29. Trading Losses

liability arising out of **your** trading loss or trading debt or **your** liability for VAT or its equivalent

30. Unsolicited Communication

liability arising directly or indirectly out of, based upon, attributable to or in any way connected with

the distribution of unsolicited mail, direct mail and facsimiles or from telemarketing

31. USA Regulatory

- a) liability arising out of any **claim** based upon or arising out of or relating directly or indirectly to or in consequence of or in any way involving:
- b) any violations of the responsibilities, obligations or duties imposed by the Employment Retirement Income Securities Act of 1974 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or any other territories that fall within United States of America jurisdiction
- c) any violations of any responsibilities, obligations or duties imposed by the Racketeer Influenced and Corrupt Organization Act of 1961 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or any other territories that fall within United States of America jurisdiction
- d) any violations of any responsibilities, obligations or duties imposed by the Securities Act of 1933, the Securities Exchange Act of 1934 and the Securities Fraud Enforcement Act of 1988 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or any other territories that fall within United States of America jurisdiction
- e) any violations of any responsibilities, obligations or duties imposed by the Money Laundering

Control Act of 1981 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or any other territories that fall within United States of America jurisdiction

- f) any violations of any responsibilities, obligations or duties imposed by the Bank Security Act of 1970 and the Right of Financial Privacy Act of 1978 or amendments thereto or any similar provisions or statute or common law enacted in the United States of America or any other territories that fall within United States of America jurisdiction.

5. PROVISIONS

1. Automatic Cover for Acquisitions

The indemnity provided under this policy will apply in respect of any new or acquired company with an annual turnover not exceeding 10% of the annual turnover **you** declared at the effective or renewal date of the policy for a period 90 days from the date of creation or acquisition pending provision of information and agreement on terms to be applied provided always that in the case of any new or acquired company whose **business** activities are substantially different from the **business you** will wherever possible notify **us** in advance of any such acquisition and in any event as soon as is reasonably possible thereafter.

2. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this policy is not enforceable by any third party.

3. Discharge of Liability

We may at any time pay in connection with any **claim** the maximum amount payable under this policy after deduction of any sum already paid in respect of such **claim** or any lower amount for which the **claim** can be settled and then relinquish the conduct and control and be under no further liability in respect of the **claim** except for the payment of **defence costs** incurred with **our** written consent prior to the date of such payment.

4. Joint Liabilities

If the **insured** comprises more than one party **we** will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if the **insured** comprised only one party and in any event will not exceed the limit of indemnity stated in the schedule.

5. Limit of Indemnity

The limit of indemnity stated in the schedule is **our** monetary limit and applies to any one **claim**.

All **claims** against any one or more of the **insured** arising from:

- a) one act or omission
- b) one series of related acts or omissions
- c) the same act or omission in a series of related matters or transactions
- d) similar acts or omissions in a series of related matters or transactions
- e) one matter or transaction

will be regarded as one **claim**. All such **claims** will be considered first made on the date upon which the earliest **claim** is first made.

6. Queen's Counsel

You will not be required to contest any legal proceedings unless a Queen's Counsel or similar authority agreed upon by **you** and **us** advises that on the facts of the case such **claim** may be contested with a reasonable prospect of success.

If **you** and **us** cannot agree on the appointment of a Queen's Counsel the chairman of the Bar Council will appoint one.

7. USA or Canada Courts Jurisdiction

Our liability in respect of any **claim** made or brought:

- a) in the United States of America or Canada or territories under their jurisdiction
- b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

will:

- i) not exceed the inner limit of indemnity stated in the schedule; and
- ii) be in the aggregate during the period of insurance; and
- iii) be inclusive of all claimants' costs and expenses and **defence costs** awarded or incurred in the defence of any **claim**
- iv) form part of and not be in addition to the limit of indemnity stated in the schedule.

6. CONDITIONS

1. Arbitration

Provided always that liability for a **claim** has been admitted any dispute as to the amount to be paid will be referred to an arbitrator who will be appointed by the parties in accordance with the statutory provisions in force at the time and the making of an award will be a condition precedent to any right of action against **us**.

2. Cancellation

We may cancel this policy by giving 30 days notice in writing by special delivery mail to **you** at **your** last known address and in such event **you** will be entitled to a return of premium in respect of the unexpired portion of the period of insurance.

3. Claims Procedures

a) Your Responsibilities

It is agreed that:

- i) on the happening of any **circumstance** or on receiving verbal or written notice of any **claim you** will:
 - 1) as soon as reasonably possible give notice to **us**; and
 - 2) as soon as reasonably possible forward to **us** any **claim**, writ or summons issued against any **insured** and any notice of prosecution, inquest or fatal inquiry; and
 - 3) at **your** own expense and as soon as reasonably possible supply full details of the **claim** in writing to **us** together with any evidence and information that may be reasonably required by **us** for the purpose of investigating or verifying the **claim** and keep **us** up to date with any future evidence and information received by **you** or reasonably required by **us**
 - 4) in the case of notification of a **circumstance** supply full particulars including all material facts, dates and persons involved and the reasons for anticipating that it is by definition a **circumstance**
- ii) no settlement, admission of liability, payment or promise of payment will be made to a third party without **our** written consent.

b) Our Rights

We will:

- i) be entitled to conduct the defence or settlement of any **claim** made against any

insured and they will give all assistance as may be reasonably required by **us**; and

- ii) be entitled to appoint legal counsel; and
- iii) be entitled to take the benefit of any rights of any **insured** against any other party before or after any **insured** has received indemnification under this policy and they will give all assistance as may be reasonably required by **us**; and
- iv) treat any **circumstance** notified during the period of insurance which subsequently gives rise to a **claim** after the period of insurance as a **claim** first made during the period of insurance.

c) Prejudice

Where in **our** opinion any **insured** has prejudiced the handling of or the settlement of any **claim** the amount payable in respect of such **claim** including **defence costs** will be reduced to such an amount as in **our** opinion would have been payable in the absence of such prejudice.

4. Contractual Right of Renewal (Tacit)

If **you** pay the premium using **our** direct debit instalment scheme **we** will have the right which **we** may choose not to exercise to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms and conditions of this policy including the premium at renewal.

If **you** do not wish to renew this policy **you** or **your** insurance intermediary must notify **us** prior to the next renewal date.

5. Fraudulent claims

If **you** or anyone acting on **your** behalf:

- a) Makes a fraudulent or exaggerated claim under this policy; or
- b) Uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim itself is genuine; or
- c) Makes a false statement in support of a claim whether or not the claim is itself genuine; or
- d) Submits a claim under this policy for loss or damage which **you** or anyone acting on **your** behalf or in connivance with **you** deliberately caused; or
- e) Realises after submitting what **you** reasonably believed was a genuine claim under this policy and then fails to tell **us** that **you** have not suffered any loss or damage; or

- f) Suppresses information which **you** know would otherwise enable **us** to refuse to pay a claim under this policy

We will be entitled to refuse to pay the whole of the claim and recover any sums that **we** have already paid in respect of the claim.

We may also notify **you** that **we** will be treating this policy as having terminated with effect from the date of any of the acts or omissions

If **we** terminate this policy under this condition **you** will have no cover under this policy from the date of the termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an **insured** and not on behalf of **you** this condition should be read as if it applies only to that **insured's** claim and references to this policy should be read as if they were references to the cover effected for that person alone and not to the policy as a whole.

6. Other Insurances

If at the time of any occurrence giving rise to a **circumstance** or **claim** there is any other insurance effected by or on **your** behalf providing an indemnity in respect of such **circumstance** or **claim** **our** liability will be limited to its rateable proportion. If any other insurance is subject to any provision whereby it is excluded from ranking concurrently with this policy in whole or in part or from contributing proportionally **our** liability under this policy will be limited to any **excess** beyond the amount which would be payable under such other insurance had this policy not been effected.

7. Payment by Instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method this policy remains an annual contract and the date of the payment and the amount of instalments are governed by the terms of the credit agreement. If an instalment is not received by the due date then subject to the Consumer Credit Act 1974 if applicable the credit agreement and this policy will be cancelled immediately.

8. Sanctions

Pen Underwriting Limited (Pen) is committed to complying with financial and trade sanctions legislation and export controls (Sanctions) in the United Kingdom, the European Union, United Nations and United States of America as well as the applicable Sanctions laws and regulations in the jurisdictions in which **we** operate. This requirement is also extended to any brokers and coverholders who undertake any insurance intermediation activity in relation to this policy.

To comply with Sanctions, Pen cannot place, provide insurance cover or make any payment in **circumstances** where it would be a considered a

breach of Sanctions. **We** may be required to take actions such as freezing the funds of parties subject to Sanctions, not performing **claims** handling activities, and making licence applications or notifications to relevant regulators.

Other third parties Pen deals with, such as financial institutions, may also apply their own policies or restrictions. Pen reserves the right to take steps to comply with Sanctions and **we** will not be liable to you for this or for similar steps taken by third parties.

9. Sole Agent

It is agreed that:

- a) if the **insured** comprises more than one party the person, company or entity set out as **you** in the schedule will act for itself and be deemed to act as the sole agent for the **insured**. All parties comprising the **insured** are deemed to have consented and agreed that rights of action under this policy are not assignable except with **our** prior written consent
- b) **you** have the sole right to file notice or proof of loss or make a **claim**
- c) **you** have the sole right to bring legal proceedings arising under or in connection with this policy
- d) knowledge possessed or discovery made by any person, company or entity forming part of **you** or by any **business partner**, director, **member**, principal or officer, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or discovery made by all other persons, companies or other entities forming part of **you**.

7. HELPLINE SERVICES

To provide ongoing assistance to **your business** we have arranged five specialist helplines with DAS Legal Expenses Insurance Company Limited (DAS).

These DAS helplines provide confidential professional advice to **your business** 24 hours a day*.

Health and Medical Information Service – 0344 893 0858

DAS will provide information on general health issues and advice on a wide variety of medical matters such as lifestyle changes, medication and travel health.

Between the hours of 7pm and 9am DAS will take a recorded message and a health and medical adviser will contact any **business partner**, director, **member**, principal or **employee** the next day or at an agreed time.

Unfortunately no explanations about diagnosis or prescription can be offered.

Legal Advice – 0344 893 0858

The DAS legal advice team give clear, practical and helpful advice on any legal matter affecting **your business** under the laws of the **members** of the EU, the Isle of Man, the Channel Islands, Switzerland and Norway. Advice typically includes **your** legal rights and the course of action available to **you**.

While unusual or particularly complex issues can be researched equally the team will advise if it is necessary for **you** to instruct a lawyer.

If DAS deems further legal advice necessary or advises that **you** should instruct a lawyer these costs will be **your** responsibility.

Tax Advice – 0344 893 0858

Confidential advice on any tax matters affecting **your business** under the laws of the England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands.

If DAS deems further advice necessary outside of that provided by this advice line any costs incurred will be **your** responsibility.

Counselling Service – 0344 893 9028

Confidential counselling for any **business partner**, director, **member**, principal or **employee** and **members** of their immediate families who permanently reside with them including where appropriate onward referral to relevant voluntary or professional services. DAS counsellors will help clarify the problem, explore available options and offer support.

All calls to this helpline are treated in the strictest confidence and are not recorded.

Business Assistance – 0344 893 0858

In the event of any unexpected damage or emergency that affects **your business** premises, this national helpline gives **you** access to a list of vetted repairers and contractors.

All costs of assistance provided by the repairers and contractors will be **your** responsibility.

These helplines are provided by DAS. If **you** have a complaint about the service or about the way **you** have been treated, please write to: DAS Customer Relations Department at: DAS House, Quay Side, Temple Back, Bristol BS1 6NH.

Alternatively **you** can contact DAS by telephone on: 0117 934 0066, or email: customerrelations@das.co.uk.

To help check and improve service standards calls are recorded other than calls to the Counselling Service.

*Helplines will be available during the period of insurance. We accept no responsibility for the availability of the helplines or any advice given in relation to the helplines. By using these services you and others using the services are agreeing to calls being recorded other than calls to the Counselling Service



Pen
underwriting