

Taxwise Plus Fee Protection Insurance Policy Wording

(Words shown in *italics* are explained in the Definitions section of this Policy Wording.)

The Policy Schedule, Contract, Proposal Form and any other information supplied or requested as part of the proposal are incorporated into this Policy.

This Policy Will Cover

Professional fees incurred by the appointed agent attending meetings with H M Revenue & Customs (HMRC) or responding to correspondence from HMRC on the *Policyholder's* behalf in respect of an *insured event* covered by this Policy. Including *professional fees incurred* in respect of a local review and preparation and representation of the *policyholder* at an appeal to the First-tier Tribunal or Upper Tribunal.

Following an appeal to the Upper Tribunal or where there is no right of appeal to the Tribunal, at the *insurer's* discretion cover will be granted for *professional fees incurred* by the *appointed agent* in respect of an application for Judicial Review.

This Policy Will Not Cover

Professional fees incurred by the appointed agent:

1. Prior to acceptance of a claim by the *insurer*.
2. Where a claim arises from facts or events that existed at the inception of this Policy or the time a *policyholder* was declared for inclusion under this Policy about which the *policyholder* or *appointed agent* knew or ought reasonably to have known was likely to give rise to a claim under this Policy.
3. Where a claim arises directly from a check, enquiry, visit, meeting or dispute undertaken by HMRC prior to the commencement of this Policy or the time a *policyholder* was declared for inclusion under this Policy, unless in the case of a renewal of a Policy.
4. Relating to attendance at, or preparation for the record review stage of a compliance and/or control review or routine inspection undertaken by HMRC.
5. Relating to the defence of or any matters relating to any criminal prosecution.
6. Relating to any claim arising from an enquiry into a *policyholder's* tax return or an amendment to a *policyholder's* tax return or any other statutory return that was submitted more than 30 days after the statutory filing date, unless HMRC accept the reason for delay.
7. Relating to any claim arising from an enquiry into a *policyholder's* tax affairs, if in

the absence of a tax return HMRC has not been notified of chargeability to tax, within the statutory time limits.

8. In respect of the preparation or rectification of self-assessment tax returns, accounts, P11Ds, P35s, VAT returns or any other statutory returns or for any *professional fees* incurred for the routine presentation of the *policyholder's* affairs, including the reconciliation of annual accounts with VAT returns.
9. In respect of any claim made, brought or commenced outside the *territorial limits*.
10. In respect of any claim notified outside of the *period of insurance* or an *insured event* which occurs outside of the *period of insurance*.
11. In respect of fees of Counsel, unless appointed or approved by the *insurer*, to determine prospects of success.
12. An enquiry by the Special Civil Investigations Office under Code of Practice 8 or an enquiry held under Section 60 or 61 of the VAT Act 1994 or any matters handled by the National Investigations Service of HMRC, unless on the conclusion of such enquiry it is held that the *policyholder* was not guilty of any fraud, fraudulent intent or serious irregularities.
13. An enquiry by the Special Civil Investigations Office under Code of Practice 9.
14. Relating to an enquiry involving a Tax Avoidance Scheme.

Specific Exclusions

Any taxes, interest, penalties and fines or any other duties, which may be imposed upon a *policyholder* or the *appointed agent*, will not be covered by this Policy.

Conditions of Cover - General

1. Due Observance

The *insurer* will only make payment under this Policy if the *policyholder* and the *appointed agent* have complied with the terms and conditions of this Policy.

2. Cancellation

This Policy may be cancelled in writing at any time by the *policyholder* by giving immediate written notice to the *insurer*. The *insurer* may also cancel this Policy by giving 30 days written notice to the *policyholder*. In the event of cancellation the *policyholder* will be entitled to a full refund of premium if the Policy is

cancelled within the first 14 days or refund of a proportionate part of the premium corresponding to the un-expired *period of insurance* where the Policy is cancelled after the first 14 days. There will be no refund of premium if the *policyholder* has made an initial notification of a claim during the *period of insurance*.

3. Disagreements

If any difference or dispute arises between the *policyholder* and the *insurer* in relation to any provision of or matter under this Policy it shall be referred to and finally resolved by arbitration before a sole Arbitrator in accordance with the Arbitration Act 1996 as amended (save as the parties may expressly agree) and the President for the time being of AIDA Re-Insurance and Insurance Arbitration (UK) shall on application of either party appoint the Arbitrator in default of agreement between the parties.

The arbitrator shall have the power to apportion costs. The *policyholder's* costs in preparation for and representation at meetings with the arbitrator shall not be recoverable under this Policy.

4. Insolvency of the *Policyholder*

If the *policyholder* becomes insolvent during the course of any claim or legal proceedings to which the *insurer* has consented the *insurer* shall reserve the right to withdraw consent. The *policyholder* shall be deemed to be insolvent upon the appointment of an office holder within the meaning given by Section 233(1) or 372(1) of the Insolvency Act 1986.

5. Minimising Claims or Legal Proceedings

The *insurer* may restrict the amount claimed if the *policyholder* has not:

- a) Taken all reasonable steps to minimise the cost and effect of any enquiry or dispute involving HMRC.
- b) Observed the requirement of taxpayers to maintain records as required under the self-assessment regulations and, in the case of a corporate *policyholder*, maintain records and books of account in accordance with the Companies Act and for VAT, maintain records in accordance with Schedule 11 of the VAT Act 1994 and the Value Added Tax Regulations 1995.
- c) Given the *appointed agent* full co-operation and information including a full

and truthful account of their affairs and all relevant documentary or other evidence.

6. Offers of Settlement

Where the *policyholder* rejects an offer of settlement, which the *insurer* deems to be reasonable, the *insurer* reserves the right to remove or restrict any further payment of *professional fees*.

7. Capital Gains Valuations

Where a valuation is required as a result of any enquiry involving Capital Gains, the *insurer* reserves the right to limit fees relating to a qualified valuation specialist to no more than £250 where (in the opinion of the *insurer*) the tax return in question was submitted without a proper valuation being carried out by a suitably qualified person.

8. Tax Return Agents

The *Appointed Agent* must be the *Policyholder's* tax return agent when the investigation, enquiry or dispute commences.

9. Choice of Law

The law applicable to this Policy shall be English Law and the parties hereby agree to submit to the jurisdiction of the Courts of England and Wales.

10. Data Protection Act 1998

It is agreed by the *policyholder* that any information provided to *Taxwise* or the *Insurer* regarding the *policyholder* will be processed by *Taxwise* or the *insurer* in compliance with the provisions of the Data Protection Act 1998 for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

Conditions of Cover - Claims Settlement

1. *Insurer's* Consent

Professional fees will only be covered under this Policy if *incurred* with the *insurer's* prior consent.

The *insurer* will give consent in writing or by telephone provided that there are reasonable grounds for representation of the *policyholder* and provided that the *insurer* is satisfied that there are reasonable prospects of the *policyholder* achieving a satisfactory outcome

in the enquiry or dispute and that it is reasonable to incur *professional fees*.

Reasonable prospects of the *policyholder* achieving a satisfactory outcome exist if:

- (a) The *policyholder* has a reasonable prospect of either pursuing or defending a claim.
- (b) The *appointed agent* would advise a paying party of moderate financial means to proceed with the claim.
- (c) The benefits likely to be obtained by proceeding with the claim justify the likely costs.
- (d) The *appointed agent* considers it reasonable in all circumstances that the claim should proceed.

The opinion of the *appointed agent* will be taken into account in determining the prospects of achieving a satisfactory outcome. If the *insurer* is not satisfied that there are prospects of achieving a satisfactory outcome in the enquiry or dispute *insurer's* consent will not be given. If the *policyholder* proceeds without consent and is unsuccessful, *professional fees* will not be covered. If the *policyholder* proceeds and is successful then the *insurer* may indemnify the *policyholder* as if consent had been given subject to the terms and conditions of this Policy.

The *insurer* will withdraw consent if facts become known which mean that a particular claim would not have been accepted under the terms and conditions of this Policy. If the *policyholder* or *appointed agent* makes a fraudulent or false claim, this Policy shall become void, any premiums shall be forfeited and any indemnity paid shall be recoverable by the *insurer*.

2. Duty to Notify

- 2.1 The *policyholder* or the *appointed agent* must, during the *period of insurance*, advise the *insurer* in writing of:
 - 2.1.1 any claim prior to *incurring* any *professional fees*;
 - 2.1.2 any change in circumstances that may affect the *insurer's* assessment of the risk and upon notification the *Insurer* shall be entitled to withdraw cover or specify revised terms.

Where a claim is notified more than 60 days after the *Insured Event* *professional fees* will not be covered.

3. Initial Consent

In the event of circumstances which may result in a claim:

- (a) The *appointed agent* or *policyholder* will complete a claim form and return it to the *insurer* together with any relevant information.
- (b) The *insurer* may, following notification authorise fees up to £750 prior to receiving a completed claim form (such authorisation shall not be deemed as the acceptance of a claim by the *insurer*).
- (c) When the full claim form is received the *insurer* will advise whether consent is given and the amount that has been authorised. The amount authorised must not be exceeded without first obtaining written consent from the *insurer*. If this amount is exceeded without consent any such additional amount may not be covered under this Policy.

4. Information and Particulars

The *insurer* will be entitled to obtain from the *appointed agent* any information or particulars, whether privileged or not, relating to a claim. On request the *policyholder* will give the *appointed agent* any instructions necessary to secure the required access.

5. Payment of the Appointed Agent's Invoices

The *insurer* will pay the *appointed agent's* invoices for *professional fees* up to the *limit of indemnity* only if satisfied that the charges are reasonable and have been properly incurred. Interim invoices will be paid provided the *policyholder* acknowledges that the *insurer* will be entitled to recover such payments if for any reason the cover is deemed void by the *insurer*.

6. Recovery of Costs

Where it is possible for the *policyholder* to recover costs from the relevant authority following the successful defence of a claim, the *policyholder* and the *appointed agent* must take all steps necessary to recover such costs and must in turn return any indemnity paid to the *insurer*.

7. Settlement by *Insurer*

Where *professional fees* are likely to exceed the duties that are being claimed against the *policyholder*, the *insurer* may pay the *policyholder* a sum equivalent to the duties in lieu of *professional fees* or further *professional fees*.

8. Maximum Hourly Charge Out Rates

The *appointed agent's* hourly charge out rates shall be limited to the respective amounts specified in the Policy Schedule.

9. Value Added Tax

The *insurer* will not be liable to pay any VAT charged by the *appointed agent* to the *policyholder* where such VAT can be recovered from HMRC.

If your complaint is not resolved you can refer your complaint to the Financial Ombudsman Service.

If you wish to put your complaint direct to the *insurer*, their address is Irwell Insurance Company Limited, Riverside, New Bailey Street, Manchester, M3 5PB.

You may be entitled to compensation from the Financial Services Compensation Scheme in the event that the *insurer* is unable to meet its liabilities.

Making a Claim

Initial notification of a claim must be made in writing by first class post or facsimile or e-mail or via Taxwise On-line to:

Taxwise
1st Floor, Stockwell House
New Buildings
Hinckley
LE10 1HW

Telephone: 01455 852560
Facsimile: 01455 852599
E-mail: info@services-taxwise.com
Taxwise On-line: www.services-taxwise.com

All notices and communications from the *insurer* or their representatives to the *policyholder* shall be deemed to have been sent if posted to the *policyholder* or *appointed agent* at the address stated in the Policy Schedule.

All notices and communications from the *policyholder* or the *appointed agent* to the *insurer* shall be deemed to have been sent if posted to *Taxwise* at the above address. *Taxwise* act as representatives to the *insurer*.

Complaints

If you are not satisfied with any aspect of this Policy or our service, you should write to: The Operations Director, *Taxwise*, 1st Floor, Stockwell House, New Buildings, Hinckley, Leicestershire, LE10 1HW.

Definitions

The words explained below will have the same meaning wherever they appear within the Policy or Policy Schedule.

Appointed Agent

An accountant or other appropriately qualified person or firm as nominated on the Policy Schedule or as approved by the *insurer*, who arranges, manages or introduces this insurance on the *policyholder's* behalf and who is appointed to represent the *policyholder* in accordance with the terms of this Policy.

Excess

The first amount of any claim specified in the Policy Schedule borne by the *policyholder* in respect of each and every claim.

Incurred

Work undertaken by the *appointed agent* for which an invoice may or may not have been raised.

Insured Event

The date on which the *policyholder* receives a notification in writing by HMRC of a check, enquiry, visit, meeting or dispute. Where the notification in writing is made under a statutory notice, each statutory notice will be regarded as a separate *insured event*.

Insurer

Irwell insurance Company Limited, Riverside, New Bailey Street, Manchester, M3 5PB or such other *insurer* as shall from time to time be notified to the *policyholder*. Irwell Insurance Company Limited is regulated and authorised by the Financial Services Authority (Ref No 202897)

Limit of Indemnity

The maximum amount payable by the *insurer* in respect of any one claim and in aggregate for all claims made during any *period of insurance* in respect of any one *policyholder*.

Period of Insurance

The period for which the *insurer* has agreed to provide this insurance as shown on the Policy Schedule.

Policyholder

The company, firm, partnership, association, individual or any other entity that has paid the appropriate premium, declared by the *appointed agent* for inclusion in this Policy.

Professional Fees

Any fees, expenses and other disbursements reasonably incurred in respect of work undertaken on behalf of the *policyholder* by the *appointed agent* in connection with any matter falling within the terms and conditions of this Policy and not exceeding the *limit of indemnity*.

Tax Avoidance Scheme

A tax avoidance mechanism, which maybe individually marketed to the *policyholder*, often by a third party, which requires significant implementation costs, is expected to obtain a tax advantage as a main benefit and if adopted after the 1 August 2004 may require notification to HMRC under Part 7 of the *Finance Act 2004*. Some examples include: Loss Schemes, Leasing Arrangements, Employee Benefit Trusts, Soft Currency Loans and Film Partnerships.

Territorial Limits

Great Britain and Northern Ireland, excluding the Isle of Man and the Channel Islands.

Taxwise

Taxwise Services Limited which manages claim settlements on behalf of the *insurer* and to whom any notification of claim must be made. Also an Insurance Intermediary who has been delegated the authority to bind cover by the *insurer*. Taxwise Services Limited is regulated and authorised by the Financial Services Authority (Ref No 304970)