

# Design & Construct Professional Multi Risk Insurance

PMR DC CAR AOC 0618

# General Definitions

Titles and Headings in this Policy are descriptive only and are used solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

Any words or expressions in the Policy which have a specific meaning appear in bold print and have the same meaning whenever they appear in the Policy (whether expressed in the singular or in the plural, male, female or neutral) unless expressly stated otherwise.

## Insured

is any person or firm stated in the Schedule and includes any current or previous partner, director, principal, member or **Employee** of any firm or company stated in the Schedule and any other person who becomes a partner, director, principal, member or **Employee** of the firm.

## Insurer

means HCC International Insurance Company PLC.

## Period of insurance

is that as stated in the Schedule.

# General Conditions

## 1. Policy construction and disputes

Any phrase or word in this Policy and the Schedule will be interpreted in accordance with the laws of England and Wales. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

Any dispute concerning the interpretation of the terms, Conditions or Exclusions contained herein is understood and agreed by both the **Insured** and the **Insurer** to be subject to the laws of England and Wales. Each party agrees to refer any such dispute to a mediator to be agreed between the **Insured** and the **Insurer** within 14 working days of any dispute arising under the Policy. 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.

The **Insured** and the **Insurer** agree to perform their respective continuing obligations under this Policy while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations. If any such dispute is not resolved by mediation or the **Insured** and the **Insurer** cannot agree

upon the appointment of a mediator or the form that the mediation will take the dispute will be submitted to the exclusive jurisdiction of any court of competent jurisdiction within England and Wales and each party agrees to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

## 2. Fraudulent claims

If the **Insured** shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then

The **Insurer** will:

- i. refuse to pay the whole of the claim; and
- ii. recover from the **Insured** any sums that it has already paid in respect of the claim.

The **Insurer** may also notify the **Insured** that it will be treating (all sections of) this policy as having terminated with effect from the date of the earliest of any of the fraudulent act. In that event the **Insured** will:

- a. have no cover under the Policy from the date of termination; and
- b. not be entitled to any refund of premium

## 3. Contracts (Rights of Third Parties) Act 1999

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 4. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by thirty days notice given in writing to the **Insured**.

## 5. Invalidity

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

## 6. Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

- a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker;

- b. in the case of the **Insurer**, to HCC International Insurance Company PLC at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

## 7. Reasonable Steps to Avoid Loss

Without prejudice to the Notification and Claims Conditions in this Policy, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any claim or **Circumstance** notifiable under this Policy.

## 8. Premium payment clause

If the premium due under this Policy has not been so paid to **Insurers** by the 60th day from the inception of this Policy, (and, in respect of instalment premiums, by the date they are due), **Insurers** shall have the right to cancel this Policy by notifying the **Insured** via their broker in writing. In the event of cancellation, premium is due to **Insurers** on a pro rata basis for the period that **Insurers** are on risk but the full policy premium shall be payable to **Insurers** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this Policy.

It is agreed that **Insurers** shall give not less than 15 days prior notice of cancellation to the **Insured** via their broker. If premium due is paid in full to **Insurers** before the notice period expires, notice of cancellation shall automatically be revoked. If not, this Policy shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

## 9. International sanctions

The **Insurer** will not provide cover, be liable to pay any claim or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations which are applicable to it.

## 10. Assignment

This policy of insurance (including any benefits it provides) are not assignable to any third party without the express approval of the **Insurer** confirmed in writing by the **Insurer**

## 11. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party

(whether a company, corporation or any other legal entity or person) the insured shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 11 – Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this policy of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 11 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 11.

## 12. Complaints

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times. If you feel that we have not offered you a first class service please write and tell us and we will do our best to resolve the problem. If you have any questions or concerns about your policy or the handling of a claim you should in the first instance contact

*Compliance Officer*  
*Tokio Marine HCC*  
*1 Aldgate*  
*London*  
*EC3N 1RE*

The Financial Ombudsman Service (FOS)

Should you be dissatisfied with the outcome of your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. Contacting the FOS does not affect your right to take legal action.

The FOS's contact details are as follows:

Financial Ombudsman Service

Exchange Tower

London E14 9SR

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

Telephone: +44 (0)30 0123 9123

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

The European Commission Online Dispute Resolution Platform (ODR)

If you were sold this product online or by other electronic means and within the European Union (EU) you may refer your complaint to the EU Online Dispute Resolution (ODR) platform. Upon receipt of your complaint the ODR will escalate your complaint to your local dispute resolution service – this process is free and conducted entirely online. You can access the

ODR platform on <http://ec.europa.eu/odr>. This platform will direct insurance complaints to the Financial Ombudsman Service. However, you may contact the FOS directly if you prefer, using the details as shown above.

## Data Protection Notice

Tokio Marine HCC respects your right to privacy. In our Privacy Notice (available at <https://www.tmhcc.com/en/legal/privacy-policy>) we explain who we are, how we collect, share and use personal information about you, and how you can exercise your privacy rights. If you have any questions or concerns about our use of your personal information, then please contact [DPO@tmhcc.com](mailto:DPO@tmhcc.com).

We may collect your personal information such as name, email address, postal address, telephone number, gender and date of birth. We need the personal information to enter into and perform a contract with you. We retain personal information we collect from you where we have an ongoing legitimate business need to do so.

We may disclose your personal information to:

- our group companies;
- third party services providers and partners who provide data processing services to us or who otherwise process personal information for purposes that are described in our Privacy Notice or notified to you when we collect your personal information;
- any competent law enforcement body, regulatory, government agency, court or other third party where we believe disclosure is necessary (i) as a matter of applicable law or regulation, (ii) to exercise, establish or defend our legal rights, or (iii) to protect your interests or those of any other person;
- a potential buyer (and its agents and advisers) in connection with any proposed purchase, merger or acquisition of any part of our business, provided that we inform the buyer it must use your personal information only for the purposes disclosed in our Privacy Notice; or
- any other person with your consent to the disclosure.

Your personal information may be transferred to, and processed in, countries other than the country in which you are resident. These countries may have data protection laws that are different to the laws of your country. We transfer data within the Tokio Marine group of companies by virtue of our Intra Group Data Transfer Agreement, which includes the EU Standard Contractual Clauses.

We use appropriate technical and organisational measures to protect the personal information that we collect and process about you. The measures we use are designed to provide a level of security appropriate to the risk of processing your personal information.

You are entitled to know what data is held on you and to make what is referred to as a Data Subject Access Request ('DSAR'). You are also entitled to request that your data be corrected in order that we hold accurate records. In certain circumstances, you have other data protection rights such as that of requesting deletion, objecting to processing,

restricting processing and in some cases requesting portability. Further information on your rights is included in our Privacy Notice.

You can opt-out of marketing communications we send you at any time. You can exercise this right by clicking on the "unsubscribe" or "opt-out" link in the marketing e-mails we send you. Similarly, if we have collected and processed your personal information with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect processing of your personal information conducted in reliance on lawful processing grounds other than consent. You have the right to complain to a data protection authority about our collection and use of your personal information

# Section 1 - Professional Indemnity Insurance

## Definitions applicable to section 1

For the purposes of this Section the words or terms that appear in bold will be interpreted as follows:

### Circumstance

shall mean any circumstance, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a claim against the **Insured** or a claim by the **Insured** under this Section.

### Computer system

shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communications system, world-wide web site, internet site, intranet site, extranet site or web address(es).

### Damages

shall mean monetary relief.

### Defence costs and expenses

shall mean all costs and expenses incurred, with the prior consent of the **Insurer**, in the investigation, defence and settlement of any claim first made against the **Insured** or of any **Circumstance** first notified during the **Period of insurance**.

### Documents

shall mean digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

### Employee

is:

- a. any person employed by the **Insured** under a contract of service, training or apprenticeship; and
- b. any voluntary worker; and
- c. any locum, seasonal or temporary personnel; and
- d. any self employed person including labour only sub-contractors, who is not an independent contractor; and

- e. any person supplied or remunerated through a contract hire company or agency, who is not an independent contractor but is employed by the contract hire company on a supply only basis, working as a member of the **Insured's** staff; but only if such person is working under the **Insured's** direction, control and supervision

### Excess

is the first amount paid in respect of each claim as stated in the Schedule under Section 1 (save where stated otherwise). The **Excess** is not payable in respect of **Defence costs and expenses**. The **Indemnity limit** is additional to the **Excess**.

### Financially associated person or entity

shall mean:

- a. any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest;
- b. any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital;
- c. any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director (as defined in s.251 of the Insolvency Act 1986) of the **Insured**;
- d. any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**.

### Indemnity limit

shall mean the **Insurer's** total liability to pay **Damages** and claimant's costs, and shall not exceed (except where specific sums are stated in the Insuring Clauses of this Section) the sum(s) stated in the Schedule against Section 1 in respect of any one claim or series of claims arising out of one originating cause regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this Section.

### Jurisdiction

means the jurisdiction stated in the Schedule against Section 1. Where no jurisdiction is stated in the schedule then the **Jurisdiction** shall be Worldwide but excluding the United States of America (including its territories and /or possessions) and Canada.

### Professional Services

is the performance of any:

- a. design or specification;
- b. supervision of construction or installation works;
- c. feasibility study;
- d. technical calculation;

- e. surveying;
  - f. any other Professional Service stated in the Schedule;
- provided that it is undertaken only by or under the direction and direct control of a properly

qualified Architect, Engineer or Surveyor or any person with not less than five years' experience relevant to the specific Professional Service being performed.

Professional Services shall not include the supervision by the Insured of its own work, the work of any Financially associated person or entity or the work of its building or engineering sub-contractors where such supervision is undertaken in its capacity as building or engineering contractor.

## Virus

shall mean any unauthorised executable code uploaded to, or replicated through, a **Computer system** or network whether termed a virus or known by any other name and whether it is self-replicating or non-replicating which causes damage or loss to data or the **Computer system**.

## Insuring Clauses To Section 1

In consideration of the premium having been paid to the **Insurer**, the **Insured** is indemnified as follows:

### 1. Indemnity

Up to the **Indemnity limit** for **Damages** and claimant's costs for which the **Insured** is legally liable to pay resulting from claims first made against the **Insured** during the **Period of insurance** and arising out of the ordinary course of any **Professional Service**, in consequence of:

- a. any negligent act error or omission of the **Insured**;
- b. any negligent act error or omission of any specialist designers, consultants or sub-contractors of the **Insured** in the performance of any **Professional Service** provided that the rights of recourse against such specialist designers, consultants or sub-contractors have not been waived or otherwise impaired;
- c. any negligent act error or omission of any specialist designers, consultants or sub-contractors in the performance of any **Professional Service** for whom the **Insured** has assumed liability under a novation agreement provided that:
  - i. the **Insured** has undertaken a satisfactory due diligence exercise;
  - ii. the novation agreement includes a full indemnity in favour of the **Insured** in respect of any liability the **Insured** may incur for any and all pre-novation services undertaken by such specialist designers, consultants or sub-contractors or the Insured's contract with its employer expressly excludes the Insured's liability for any and all pre-novation services undertaken by such specialist designers, consultants or sub-contractors;
  - iii. rights of recourse against such specialist designers, consultants or sub-contractors have not been waived or otherwise impaired;
  - iv. no indemnity shall be provided in relation to any claim arising out of any circumstances of which the **Insured** was, or ought reasonably to have been aware at the time such liability was assumed.
- d. Failure by the **Insured** to warn any client or clients of any inadequacy or deficiency (alleged or otherwise) in any design, specification or formula supplied by the client.
- e. any dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given under this Section in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;
- f. libel or slander or defamation;

- g. unintentional breach of confidentiality or other invasion, misuse of private information, infringement or interference with rights of privacy or publicity including false light and the public disclosure of private facts including misuse of any information which is either confidential or subject to statutory restrictions;
- h. unintentional infringement of intellectual property rights except patents;
- i. the loss of or damage to **Documents**.

## 2. Legal defence costs and expenses

The **Insurer** will pay in addition to any indemnity under Insuring Clause 1, all **Defence costs and expenses** provided that:

- a. if the amount paid or agreed to be paid by or on behalf of the **Insured** to dispose of a claim exceeds the **Indemnity limit** the **Insurer** will only be liable for that proportion of the **Defence costs and expenses** which the **Indemnity limit** bears to the amount paid or agreed to be paid;
- b. in the event that the **Insurer** elects to make a payment to the **Insured** pursuant to Notification and Claims Condition 3.2 then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made.

## 3. Costs for prosecuting infringement of the Insured's intellectual property rights

Up to a maximum of GBP 25,000 in the aggregate in the **Period of insurance**, for the reasonable and necessary costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, in the pursuance of any claim first made by the **Insured** against a third party during the **Period of insurance**, for infringement of intellectual property rights first discovered by the **Insured** during the **Period of insurance** where the ownership of such rights is vested in the **Insured**.

For the purposes of this Insuring Clause **Insurers** will only give prior consent where the **Insured** has provided, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the **Insured's** intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success.

## 4. Costs of criminal proceedings

For legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any proceedings brought under the prevailing listed building, building regulation or health and safety legislation and any applicable orders or regulations made pursuant to that legislation or any applicable codes of practice or procedures issued by any governing body concerned with health and safety provided always that:

- a. The act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the performance of any **Professional Service**;
- b. The **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- c. The **Insurer** shall have no liability to pay costs incurred subsequent to a plea or finding of guilt on the part of the **Insured**, or in the event that Counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable.

The **Insurer's** total liability under Insuring Clauses 4) and 7) shall not exceed GBP 250,000 in the aggregate in the **Period of insurance** and the **Insurer** shall have no liability to pay for the **Insured's** own costs and expenses.

## 5. Collateral warranties

Up to the **Indemnity limit** for claims first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable to pay **Damages** and claimant's costs and arising out of the performance of any **Professional Service** in consequence of or arising from entering into any collateral warranty, duty of care agreement or any similar agreement provided that, in so doing, the **Insured** does not make itself liable:

- a. to provide a level of service or produce a result beyond the scope of any duty that would otherwise be implied by common law or statute; or
- b. to any greater extent or for any longer a period than is the case under the agreement with the person or party with whom the **Insured** originally contracted to perform the same work; or
- c. under any financial guarantee, for any contractual penalty or for liquidated damages.

## 6. Mitigation of loss

Up to the **Indemnity limit** for reasonable costs and expenses incurred with the **Insurer's** prior written consent in respect of any action taken to mitigate or avoid a loss or potential loss prior to practical completion that otherwise would be the subject of a claim under this Policy.

## 7. Costs for representation

For all reasonable and necessary legal costs incurred by the **Insured** with the **Insurer's** prior written consent for representation at any inquiry or other proceeding which has, in the **Insurer's** sole opinion, a direct relevance to any claim, **Circumstance** or event which could form the subject of indemnity under this Section.

For the avoidance of doubt Costs for Representation cover does not apply to Insuring Clause 3.

The **Insurer's** total liability under Insuring Clauses 4) and 7) shall not exceed GBP 250,000 in the aggregate in the **Period of insurance** and the **Insurer** shall have no liability to pay for the **Insured's** own costs and expenses.

## 8. Data protection and defence costs

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, in respect of legal costs and expenses incurred with the **Insurer's** prior written consent in the defence of any criminal proceedings brought under The Data Protection Act or amending or superseding legislation provided always that:

- a. The act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the performance of any **Professional Service**;
- b. The **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- c. The **Insurer** shall have no liability to pay costs incurred subsequent to a plea or finding of guilt on the part of the **Insured**, or in the event that Counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable.

For the avoidance of doubt the indemnity provided under Insuring Clauses 3), 4), 7), and 8) is not additional to and shall not increase the **Indemnity limit**.

## Exclusions Applicable To Section 1

The **Insurer** shall not be liable to indemnify the **Insured** against any claim:

### 1. Employers liability

arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal, director, member or **Employee** or applicant for employment;

### 2. Bodily injury/property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such claim arises out of negligent design, specification, survey or any other activity as stated in the Schedule under Other Activities;

### 3. Land buildings etc

arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

### 4. Dishonesty

arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the **Insured** or any **Employee**, except as covered by Insuring Clause 1e);

### 5. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party and which is more onerous than any duty that would otherwise be implied by common law or statute, except as covered by Insuring Clause 5.

### 6. Products

arising out of or relating to:

- a. goods or products sold, supplied, repaired, altered, manufactured, installed or maintained; or
- b. buildings, building works or physical structures constructed, repaired, installed, erected, removed or demolished;

by the **Insured** or any **Financially associated person or entity** or sub-contractor of the **Insured** unless such claim is the direct consequence of any negligent act, error or omission arising out of the performance of any **Professional Service**;



## 7. Insolvency/bankruptcy of Insured

arising out of or relating directly or indirectly to the insolvency, liquidation, receivership or bankruptcy of the **Insured**;

## 8. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind;

## 9. Claims or Circumstances known at inception

arising out of any claim or **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware at inception of this Policy, whether notified under any other insurance or not;

## 10. Other insurance

in respect of which the **Insured** is, or but for the existence of this Policy would be, entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

## 11. Geographical limits

in respect of work carried out outside the Geographical Limits stated in the Schedule;

## 12. Legal action

in respect of an action for **Damages**:

- a. brought outside the **Jurisdiction** (including the enforcement within the **Jurisdiction** of a judgment or finding of another court or tribunal that is not within the **Jurisdiction**);
- b. in which it is contended that the governing law is outside the **Jurisdiction**;
- c. brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other jurisdiction;

## 13. Fines and penalties

for penalties, fines, multiple, exemplary, liquidated or other non-compensatory **Damages** awarded other than in actions brought for libel, slander or defamation as far as they are covered by this Policy;

## 14. Claims by financially associated persons or entities

made against the **Insured** by any **Financially associated person or entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any claim brought against such **Financially associated person or entity** by an independent third party which would, but for this exclusion, be covered by this Policy

## 15. Retroactive date

made by or against or incurred by the **Insured** arising from any act or omission or originating cause that occurred prior to the Retroactive date stated in the Schedule;

## 16. Radioactive contamination or explosive nuclear assemblies

directly or indirectly caused by or contributed to by or arising from

- a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

## 17. Excess

for the amount of or less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under this Section;

## 18. War

arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

## 19. Terrorism

arising directly or indirectly out of, happening through or in consequence of any act or acts of force or violence for political, religious or other ends directed towards the overthrowing or influencing of any government, or for the purpose of putting the public in fear by any person or persons acting alone or on behalf of or in connection with any organisation.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply;

## 20. Asbestos

arising directly or indirectly out of or resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;

## 21. Other appointments

made against any **Insured** in the capacity of:

- a. director or officer of the **Insured** or of any other company or arising out of the management of the **Insured** or of any other company; or

- b. trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise;

## 22. Trading losses

arising out of:

- a. any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);
- b. loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, joint venture partner or similar because of any misstatement or misrepresentation made by the **Insured**;
- c. the actual or alleged over-charging or improper receipt of fees by the **Insured**;

## 23. Virus

arising directly or indirectly from any **Virus**;

## 24. Patents

arising directly or indirectly from the infringement of any patent;

## 25. Project partnering

arising out of or in respect of work carried out by any project partnership of which all or any of the **Insured** form part unless the claim or loss emanates from the acts or omissions of the **Insured**;

## 26. Joint ventures

arising out of or in respect of work carried out by or in the name of a consortium of professional people or firms or other association formed of which all or any of the **Insured** form part for the purpose of undertaking any joint venture or any other profit-sharing arrangement unless the claim or loss emanates from the acts or omissions of the **Insured**;

## 27. Valuation reports

arising from any valuation report prepared by or on behalf of the **Insured** except for the purpose of certifying payments due to contractors or measuring quantities;

## 28. Insurance, finance and costs

arising directly or indirectly out of or in any way connected with:

- a. the arranging or maintenance of insurance, sureties or bonds or the provision of finance or advice on financial matters;
- b. estimates of construction costs;

## 29. Workmanship

arising directly or indirectly from or relating to:

- a. defective workmanship;
- b. defective or deleterious materials;
- c. manual labour operations;

## 30. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured** except as covered under Insuring Clause 1e) as a result of a dishonest, fraudulent or malicious act or omission of any former or present **Employee**.

## 31. Costs and expenses incurred without prior consent

for costs and expenses incurred without the prior consent of the **Insurer**;

## 32. Claims by Employees

made against the **Insured** by any present or former **Employee**.

# Notification and Claims Conditions

## Applicable To Section 1

### 1. Claim/Circumstance notification

As conditions precedent to their right to be indemnified under Section 1 of this Policy the **Insured**:

1.1 shall inform the **Insurer**, in writing, as soon as possible, and in any event within 28 days of the receipt, awareness or discovery during the **Period of insurance** of:

- a. any claim made against them;
- b. any notice of intention to make a claim against them;
- c. any **Circumstance**;
- d. the discovery of reasonable cause for suspicion of dishonesty or fraud.

provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, or if the **Insured** renews this Policy with the **Insurer**, within 7 days after its expiry.

Such notice having been given as required in b), c) or d) above, any subsequent claim made shall be deemed to have been made during the **Period of insurance**;

- 1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of the **Insurer**; and
- 1.3 shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim.

Every letter of claim, writ, summons or process and all documents relating thereto and any other written notification of claim shall be forwarded, unanswered, to the **Insurer** immediately they are received. The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** to allow the **Insurer** to be able 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.

### 2. Notifications

Any and all notifications of **Circumstances** and claims for an indemnity pursuant to the policy of insurance shall be notified to HCC International Insurance Company PLC by either (a) email (b) telephone or (c) first class post.

If by email then such must be addressed to PI Claims and sent to [mail@tmhcc.com](mailto:mail@tmhcc.com)

If by telephone, please dial the following number and ask for a PI claims underwriter:

Telephone- +44 (0)20 7702 4700

If by post:

PI Claims HCC International Insurance Company PLC  
Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

### 3. Conduct of claims

3.1 Following notification under condition 1. above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any such claim.

Nevertheless neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Queens Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.

3.2 The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim. For the avoidance of doubt the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.

#### 3.3 Waiver of subrogation against employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment brought about or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act.

#### 3.4 Dishonest or fraudulent act or omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this Policy.

## Special Notification Conditions Applicable To Section 1

**The Insured shall, as a condition precedent to their right to indemnity under this Policy, comply with the Special Notification Conditions below, the Insurer only being liable to indemnify the Insured in respect of any notification(s) made to the Insurer during the Period of insurance.**

For the purposes of these Special Notification Conditions Adjudication notice shall mean any adjudication notice pursuant to contract (including a "Notice of Adjudication" and/or "referral notice" pursuant to the Scheme For Construction Contracts (England & Wales) Regulations 1998 and/or the Scheme For Construction Contracts (England & Wales) Regulations 1998 (Amendment) (England) Regulations 2011 and/or the Scheme for Construction Contracts (Scotland) Regulations 1998) and "adjudication" and "adjudicator shall be construed in that context:-

1. The **Insured** shall give the Insurer written notice within 2 working days of:
  - a. the receipt of any such **Adjudication notice**;
  - b. the receipt of any indication, whether in writing or otherwise, of an intention on the part of any party to serve the **Insured** with an **Adjudication notice**;
  - c. becoming aware of circumstances in which the commencement of an adjudication involving the **Insured** is likely.

This notice must be given during the **Period of insurance**.

2. The **Insured** must promptly supply the **Insurer** with all details relating to any references to adjudication, including copies of all documentation made available to the **Insured**.
3. The **Insured** must:
  - a. allow the **Insurer** to appoint advisors and to have conduct of the adjudication as they deem appropriate;
  - b. co-operate with the **Insurer** and their advisors in the conduct of the adjudication;
  - c. meet any request, direction or timetable of the adjudicator;
  - d. not agree to accept the decision of the adjudicator as finally determining the dispute without the prior written consent of the **Insurer**.
4. The adjudication provisions in the Contract (if any) or otherwise applying to the Contract must:
  - a. provide that the adjudicator must be independent of the parties to the dispute;
  - b. not allow for the adjudicator's decision to finally determine the dispute;

- c. not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations;
- d. not place restrictions upon the timing of the commencement of legal or arbitration proceedings (for the sake of clarity this does not apply to adjudication proceedings).

### Further condition

The **Insurer** shall be **entitled** to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. The **Insured** shall give all such assistance as the **Insurer** may reasonably require in relation to such proceedings or arbitration.

## General Condition Applicable To Section 1

### Mergers and acquisitions

If during the **Period of Insurance** the **Insured**:

- a. purchases assets or acquires liabilities from another entity in an amount no greater than 10% of the assets of the **Insured** as listed in its most recent financial statement; or
- b. acquires another entity whose annual revenues are no more than 10% of the annual revenues of the **Insured** for their last completed financial year; and
- c. there is no material deviation to the **Insured's Professional services**; and
- d. prior to the acquisition of the acquired company not being aware of any professional indemnity claims or circumstances that could give rise to a claim

then this Section 1 of this Policy shall automatically include such entity as an **Insured** but only in respect of any act or omission occurring on or after the date of merger or acquisition unless otherwise agreed by the **Insurer**.

# Section 2 – Liability & Contractors' All Risks Insurance

## Definitions applicable to Section 2

For the purposes of this Section the words or terms that appear in **bold** will be interpreted as follows:

### Bodily Injury

shall mean

- a. in respect of Section 2A death bodily injury illness disease shock mental injury and mental anguish
- b. in respect of Sections 2B & 2C death bodily injury illness disease shock mental injury mental anguish false eviction false arrest wrongful detention discrimination and malicious prosecution.

### Business

shall mean the Business stated in the **Proposal** and

- a. the ownership repair and maintenance of the **Insured's** own property
- b. the provision of canteen sports social welfare organisations and first aid medical or ambulance services for the benefit of any customer or **Employee**
- c. fire and security services for the protection of the premises owned or occupied by the **Insured**
- d. private work undertaken by an **Employee** on behalf of any director or partner of the **Insured**
- e. attendance at trade fairs shows and exhibitions in connection with the **Business**

### Damages

shall mean monetary compensation capable of being awarded in civil proceedings but excluding aggravated and exemplary damages.

### Defence Costs

shall mean all costs and expenses incurred by the **Insured** with the **Insurer's** prior written consent in the investigation, defence or settlement of any claim under this Section

### Employee

shall mean **Employee** as defined under Section 1 but shall also include any labour master and persons supplied by him whilst working under the **Insured's** direction, control and supervision

### Excess

is the first amount paid in respect of each claim as stated in the Schedule under Section 2. The **Excess** is not payable in respect of **Defence Costs**.

### Offshore

shall mean from the time an **Employee** of the **Insured** embarks onto a conveyance at the point of final departure to an offshore rig or offshore platform until such time the **Employee** disembarks from the conveyance onto land upon return from an offshore rig or an offshore platform.

### Pollution

shall mean pollution or contamination of the atmosphere or of any water, land or other tangible property.

### Product

shall mean any property after it has left the custody or control of the **Insured** which has been designed specified formulated manufactured sold supplied or distributed by or on behalf of the **Insured** in isolation to any contract work executed by or on behalf of the **Insured**.

### Territorial limits

- a. in respect of Sections 2A, 2B and 2C Great Britain Northern Ireland the Channel Islands and the Isle of Man or an offshore Installation within the territorial waters around Great Britain Northern Ireland the Isle of Man and the Channel Islands
- b. in respect of Section 2D Great Britain Northern Ireland, the Channel Islands and the Isle of Man

### Terrorism

shall mean an activity that (1) 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 (2) appears to be intended to (i) intimidate or coerce a civilian population or (ii) disrupt any segment of the economy of a government de jure or de facto state or country; or (iii) overthrow, influence or affect the conduct of policy of any government de jure or de facto by intimidation or coercion; or (iv) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

## Section 2A – Employers’ Liability

### Operative clause to section 2A

The **Insurer** will indemnify the **Insured** in accordance with the law of the Courts of Law of Great Britain Northern Ireland the Isle of Man and the Channel Islands against their liability to pay **Damages** (including claimants’ costs fees and expenses) and **Defence Costs** in respect of **Bodily Injury** sustained by an **Employee** arising out of the **Business** and caused during the **Period of Insurance**

The indemnity provided shall only apply to **Bodily Injury** sustained

1. within the **Territorial Limits**
2. by any **Employee** during temporary visits abroad provided that such **Employee** is ordinarily resident in the **Territorial Limits**
3. by a person who although resident outside the **Territorial Limits** is under a written contract of service with the **Insured** entered into in the **Territorial Limits** subject to prior written agreement of the **Insurer**

### Limits of Indemnity to Section 2A

**Insurer’s** liability to pay **Damages** (including claimants’ costs fees and expenses) and **Defence Costs** shall not exceed the sum stated in the Schedule in respect of any one occurrence or series of occurrences arising out of one originating cause

### Exclusions to Section 2A

This Section does not provide indemnity

1. in respect of any liability for which compulsory motor insurance or security is required under the Road Traffic Act 1988 as amended by the Motor Vehicles (Compulsory Insurance) Regulations 1992 and the Road Traffic (Northern Ireland) Order 1981 as amended by the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1993 or any other Compulsory Road Traffic Legislation
2. in respect of work undertaken **Offshore**
3. in respect of:
  - a. medical costs and expenses incurred by the **Insured** and/or any **Employee** of the **Insured**
  - b. repatriation costs and expenses incurred by the **Insured** and/or any **Employee** of the **Insured** who is injured outside Great Britain Northern Ireland the Channel Islands or the Isle of Man.

### Extension to Section 2A

### Unsatisfied Court Judgements

The **Insurer** at the request of the **Insured** will pay to the **Employee** or the personal representatives of the **Employee** the amount of any **Damages** and awarded costs to the extent that they remain unsatisfied in whole or in part six months after the date of a judgment being obtained within

any court in Great Britain, Northern Ireland, the Channel Islands or the Isle of Man:

- a. by any **Employee** or the personal representatives of any **Employee** in respect of **Bodily Injury** sustained by the **Employee** arising out of and in the course of their employment by the **Insured** in the **Business** and caused during the **Period of Insurance**; and
- b. against any company or individual operating from premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man,  
provided always that:
  - there is no appeal outstanding against such judgment; and
  - if any payment is made under the terms of this Extension the **Employee** or the personal representatives of the **Employee** shall assign the benefits of such judgment to the **Insurer**.

The liability of the **Insurer** for all amounts payable under this Extension relating to any claimant or number of claimants in respect of an occurrence or series of occurrences arising out of one originating cause shall not exceed the Indemnity Limit stated in the Schedule against section 2A.

### Condition Applicable to Section 2A

### Employers’ Liability Compulsory Insurance Clause

The indemnity granted by this Section is deemed to be in accordance with the provisions of any law relating to compulsory insurance of liability to **Employees** in Great Britain Northern Ireland the Isle of Man the Island of Jersey the Island of Guernsey the Island of Alderney and offshore in territorial waters around Great Britain and its Continental Shelf BUT the **Insured** shall repay to the **Insurer** all sums paid by the **Insurer** which the **Insurer** would not have been liable to pay but for the provisions of such law ordinance or statute

This Condition shall not apply in respect of claims arising by virtue of paragraph 3. of the Operative Clause

## Section 2B – Public/Products Liability

### Operative clause to section 2B

The **Insurer** will indemnify the **Insured** in accordance with the law of the Courts of Law of Great Britain Northern Ireland the Isle of Man and the Channel Islands against their liability to pay **Damages** (including claimants’ costs fees and expenses) and **Defence Costs** in respect of

1. accidental **Bodily Injury** to any person
2. accidental loss of or damage to tangible property
3. nuisance trespass or interference with any easement right of air light water or way other than where arising due to a deliberate act by the **Insured**  
occurring during the **Period of Insurance** in connection with the **Business** and
  - a. within the **Territorial Limits** or

- b. during the course of temporary visits anywhere in the world other than the USA or Canada or
- c. arising out of any **Product** anywhere in the world other than the USA or Canada

## Limits of Indemnity to Section 2B

**Insurer's** liability to pay **Damages** (including claimant's costs and expenses) shall not exceed the sum stated in the Schedule in respect of any one occurrence or series of occurrences arising out of one originating cause but in respect of Products Liability the Indemnity Limit represent the **Insurer's** total liability in respect of all occurrences.

**Defence Costs** will be payable in addition to the Limits of Indemnity.

In the event of any one originating cause giving rise to an occurrence or series of occurrences which form the subject of indemnity under this Section and Section 2C each Section shall apply separately and be subject to its own separate Limits of Indemnity provided always that the total amount of **Insurer's** liability shall be limited to the greatest Limits of Indemnity available under either Section providing indemnity for the occurrence or series of occurrences

## Exclusions to Section 2B

This Section does not provide indemnity in respect of liability

1. for **Bodily Injury** sustained by any **Employee** in connection with the **Business**
2. arising out of **Pollution**
3. for loss or damage to property owned leased or hired by or under hire purchase or on loan to the **Insured** or in the **Insured's** care custody and control other than
  - a. **Employees'** and visitors clothing and personal effects
  - b. premises (including contents thereof) not owned nor rented by the **Insured** but temporarily occupied by them for the purpose of work therein or thereon
  - c. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement
4.
  - a. arising out of ownership possession or use of any mechanically propelled vehicle where a Certificate of Motor Insurance or surety is required under any Road Traffic Act or similar legislation other than
    - 1 vehicles designed primarily to operate as tools of trade (which term shall be deemed to include any plant primarily designed to operate on or about a contract site)
    - 2 other vehicles brought on to site for use on site

This exclusion shall not apply in respect of the use of vehicles belonging to **Employees** or third parties in connection with the **Business** unless indemnity is provided

- i. to the **Employee** or
  - ii. to the third party or
  - iii. to the **Insured** under any other insurance
  - iv. in respect of loss of or damage to any vehicle of any **Employee** or third party to whom the indemnity is provided or any property conveyed therein or thereon
- b. caused by the ownership or operation by or on behalf of the **Insured** of any waterborne craft (other than safety boats hand-propelled craft or other craft up to 15 metres in length whilst on inland waterways or up to 3 miles offshore) hovercraft aircraft or rail borne vehicle
5. arising out of liquidated damages clauses penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties
6. for loss or damage to and/or the costs of repair reconditioning removal replacement or recall of any **Product** or part thereof or any contract work executed by the **Insured** caused by any defect therein or unsuitability thereof for its intended purpose
7. which is the inevitable or unavoidable consequence of the performance of a contract
8. for loss of or damage to cables pipes or other services located underground unless the **Insured** has
  - a. taken or caused to be taken all reasonable measures to identify the location of such cables pipes and services before any work is commenced which may involve a risk of damage thereto (reasonable measures include contacting the appropriate authorities where it is possible cables pipes or services are under the site)
  - b. retained a written record of the measures which were taken to locate such cables pipes or other services
  - c. conveyed the location of such cables pipes and services to those who are carrying out such work on behalf of the **Insured**
9. arising out of an act of **Terrorism**
10. arising out of exposure or alleged exposure to asbestos or materials containing asbestos
11. arising out of work on any part of any aerodrome or airport provided for take off or landing of aircraft or the movement of aircraft or parking of aircraft including associated surface roads and ground equipment parking areas
12. arising as a result of advice, design or specification given by the **Insured** for a fee
13. for the cost of remedying any defect or alleged defect in premises disposed of
14. arising out of any **Product** intended for incorporation into any aircraft



15. arising out of any **Product** intended for incorporation into any vehicle licensed for road use where the **Product** is critical to the safety of such vehicle
16. arising out of any **Product** intended for incorporation into any waterborne craft where the **Product** is critical to the safety of such craft
17. arising out of any **Product** which is intended for use in connection with railways or tramways except where especially stated to be included in the **Business**.

## Section 2C - Pollution Liability

### Operative clause to section 2C

The **Insurer** will indemnify the **Insured** in accordance with the law of the Courts of Law of Great Britain Northern Ireland the Isle of Man and the Channel Islands against their liability to pay **Damages** (including claimants' costs fees and expenses) and **Defence Costs** in respect of

- a. accidental **Bodily Injury** to any person
- b. accidental loss of or damage to tangible property
- c. nuisance trespass or interference with any easement right of air light water or way other than where arising due to a deliberate act by the **Insured** arising out of **Pollution** occurring in its entirety during the **Period of Insurance** within the **Territorial Limits** in connection with the **Business** but only to the extent that the **Insured** can demonstrate that such **Pollution**
  - a. was the direct result of a sudden specific and identifiable event occurring during the **Period of Insurance** and
  - b. was not the direct result of the **Insured** failing to take reasonable precautions to prevent such **Pollution**

### Limits of Indemnity to Section 2C

**Insurer's** liability to pay **Damages** (including claimants' costs fees and expenses) shall not exceed the sum stated in the Schedule in respect of all occurrences

**Defence Costs** will be payable in addition to the Limits of Indemnity

In the event of any one originating cause giving rise to an occurrence or series of occurrences which form the subject of indemnity under this Section and Section 2B each Section shall apply separately and be subject to its own separate Limits of Indemnity provided always that the total amount of the **Insurer's** liability shall be limited to the greatest Limits of Indemnity available under either Section providing indemnity for the occurrence or series of occurrence

### Exclusions to Section 2C

This Section is subject to the Exclusions to Section 2B (apart from Exclusion 2.) and also does not provide indemnity in respect of liability for loss of or damage to

1. premises presently or at any time owned or tenanted by the **Insured**
2. land or water within or below the boundaries of any land or premises presently or at any time previously

owned or leased by the **Insured** or otherwise in the **Insured's** care custody or control

## Extension to Section 2C

### Clean-up costs

The indemnity provided by this Section shall be extended to include Clean Up to the extent not already included

Provided that

- a. The indemnity provided by this Extension shall not
  - i. include Clean Up of any site or watercourse or body of water contained within or on any site or any other tangible property owned by or leased or rented to the **Insured** or formerly owned by or formerly leased or rented to the **Insured**
  - ii. include the cost of restoration reinstatement or reintroduction of any organism
  - iii. apply in respect of **Pollution** outside Great Britain Northern Ireland the Channel Islands and the Isle of Man
- b. the **Pollution**
  - i. was the direct result of a sudden specific and identifiable event occurring during the **Period of Insurance** and
  - ii. was not the direct result of the **Insured** failing to take reasonable precautions to prevent such **Pollution**
- c. The **Insurer's** liability under this Extension shall not exceed £250,000 in respect of all occurrences during the **Period of Insurance** including **Defence Costs** and claimants' costs fees and expenses
- d. The **Insured** agrees to pay the first 20% or £5,000 (whichever is the greater) in respect of each occurrence

For the purpose of this Endorsement the following additional definitions will apply:

**Clean Up** means the cost of Remediation incurred by the **Insured** (or for which they are legally liable) as required by any Enforcing Authority but shall not include the costs of achieving any improvement or alteration in the condition of the land the atmosphere or any watercourse or body of water or any other tangible property beyond that required under any relevant and applicable law or statutory enactment at the time Remediation commences

It shall include the costs reasonably and necessarily incurred by the **Insured** or for which they are legally liable to curtail or minimise **Pollution** once it has occurred to prevent further harm being caused but only to the extent required by any Enforcing Authority.

**Enforcing Authority** means any government or statutory authority or body implementing or enforcing environmental protection legislation

Remediation means remedying the effect of **Pollution**.

## Conditions Applicable To Sections 2B & 2C

### 1. Burning welding and cutting conditions

It is a condition precedent to liability under this Section that the following precautions shall be adhered to on each occasion where the **Insured** or persons acting on behalf of the **Insured** are using any oxy-acetylene or electric welding or cutting/grinding equipment or blow lamp or blow torch or hot air gun away from the **Insured's** own premises

1. the immediate area in which the operation is to be carried out must be segregated to the greatest practicable extent by the use of screens made of metal and/or fire retardant material
2. the whole of this segregated area must be adequately cleaned and freed from combustible material before operations commence
3. if work is to be carried out overhead the area beneath must be similarly cleaned and combustible material removed
4. combustible floors/substances in or surrounding this segregated area must be liberally covered with sand or protected by overlapping sheets of incombustible material
5. where work is being carried out in any enclosed area an additional **Employee** of the **Insured** or an **Employee** of the occupier shall be present at all times to guard against an outbreak of fire
6. no work should be carried out unless specifically authorised by the occupier who should also be asked to approve the safety arrangements
7. the following must be kept available for immediate use near the scene of operations
  - a. suitable and fully charged fire extinguishers and/or
  - b. a hose connected up to the nearest hydrant with water turned on and controllable at the nozzle of the hose in readiness for immediate use and tested prior to the commencement of the work
8. a thorough examination must be made in the vicinity of the work approximately one hour after the termination of each operation In the event that it is not practicable for such examination to be carried out by the **Insured's** own **Employee** then appropriate arrangements must be made with the occupier
9. before "burning off" metal work built into or projecting through walls or partitions an examination should be made to confirm that the other end of the metal is not in a hazardous proximity to combustible material which may be ignited by the conduction of heat

Furthermore where the **Insured** or persons acting on behalf of the **Insured** burns debris it is a Condition precedent to liability under this Policy that the following precautions shall be taken on each occasion

1. Fires to be in a cleared area and at a distance of at fifteen metres from any property
2. Fires not to be left unattended at any time

3. A suitable fire extinguisher to be kept available at the scene of the operations for immediate use

Fires to be extinguished at least one hour prior to leaving site at the end of each working day

### 2. Bona fide subcontractors condition

It is a condition precedent to liability under this Section that all bona fide subcontractors engaged by the **Insured** shall have in full force and effect throughout the duration of their contract with the **Insured** insurances as follows

1. Employers Liability insurance in respect of their liability at law for **Bodily Injury** to any **Employee**
2. Public/Products Liability insurance in respect of their liability at law for
  - a. **Bodily Injury** to any person
  - b. loss of or damage to tangible property
  - c. nuisance trespass or interference with any easement right of air light water or way

with a Limit of Indemnity of at least GBP 5,000,000 or that shown in the Schedule in respect of Section 2B (whichever is the lower) any one occurrence or series of occurrences arising out of one original cause

and that

1. such insurances contain an Indemnity to Principals Clause
2. the **Insured** shall have obtained and retained a copy of written evidence of such insurances

For the purposes of this Endorsement the term bona fide subcontractors means any independent subcontractor engaged by the **Insured** under a contract for services

## Extensions Applicable To Sections 2A, 2B & 2C

### 1. Additional defence costs

**Defence Costs** extend to include legal expenses incurred with the **Insurer's** written consent within the courts of Great Britain Northern Ireland the Isle of Man and the Channel Islands

- a. arising out of representation at any Coroner's Inquest or Fatal Accident inquiry
- b. arising out of any criminal prosecution or proceedings relating to an offence alleged to have been committed during the **Period of Insurance** and in the course of the **Business** of the **Insured** in respect of matters which may form the subject of indemnity by this Policy (including with the **Insurer's** prior consent **Employees** partners or directors of the **Insured**)

provided that

- i. the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution
- ii. the **Insurer** shall not be responsible for **Defence Costs** where at the **Insurer's** discretion they may

require the opinion of counsel (whose appointment is at the **Insurer's** sole discretion) as to whether or not such costs should extend or continue to extend to the support of such defence and where such counsels opinion is that there is no reasonable defence to the prosecution

- iii. the **Insurer's** liabilities for **Defence Costs** in cases of breach or alleged breach of the United Kingdom Health & Safety at Work Act 1974 (and/or any legislation of similar effect) are limited to prosecutions under Section 33(1) (a) to (c) of the Act or similar duty imposed under consolidating legislation or legislation in Northern Ireland the Isle of Man or the Channel Islands
- c. arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of Indemnity by this Policy

The indemnity applies only to such liability as defined by each Section of this Policy arising out of the **Business** of the **Insured** as stated in the Schedule subject always to the terms Conditions limitations and Exclusions of such Section and of the Policy as a whole

## 2. Cross liability clause

It is hereby declared and agreed that where more than one party is named in the Schedule as the **Insured** indemnity shall apply as though individual insurances have been issued to each party provided always that the **Insurer's** total liability shall not exceed the sums stated in the Schedule as the Limits of Indemnity

## 3. Housing Grants Construction and Regeneration Act, 1996 - Applicable to Sections 2B & 2C

The indemnity granted by this Policy is extended to apply to any process of adjudication or decision of any adjudicator pursuant to the Act provided always that as a condition precedent to the **Insurer's** liability under this Policy the **Insured** agrees to comply with Conditions (a) and (b) as follows

- a. Policy Conditions  
The **Insured** shall
  - i. notify the **Insurer** immediately upon receipt (and in no event later than two working days thereafter) of any notice of intention to refer a dispute to adjudication ("notice of adjudication") or of the service by the **Insured** of any notice of adjudication in circumstances which will lead to or are likely to lead to a claim being made against the **Insured** (whether under a process of adjudication or otherwise)
  - ii. promptly forward to the **Insurer** all information relating to any dispute referred to adjudication including copies of all documentation made available to the **Insured** or subsequently by the **Insured** to the adjudicator

- iii. allow the **Insurer** to appoint advisers or representatives and to have conduct (including the right but not the obligation to take over the conduct) of the adjudication as they deem appropriate and provide such assistance as the **Insurer** may reasonably require
- iv. meet any request direction of timetable of the adjudicator
- v. satisfy the **Insurer** that any dispute referred to adjudication is or would be the subject of indemnity under this Policy and that the decision reached by the adjudicator represents the award against the **Insured** of a payment of money by the **Insured** which constitutes compensatory damages which form the subject of such indemnity
- vi. not agree to accept the decision of the adjudicator as finally determining the dispute without the prior written consent of the **Insurer**
- vii. in the event of a decision reached by the adjudicator that such an award as described in v) above is payable give the **Insurer** every assistance in instituting legal proceedings (or arbitration if applicable in accordance with the **Insured's** contract) in order to challenge reopen stay the enforcement of or overturn such adjudicator's decision or otherwise to recover such award if the **Insurer** deem it appropriate

The **Insurer** shall have sole conduct of all such proceedings

- b. Conditions relating to contracts

Any provisions relating to adjudications pursuant to the Act in any contract entered into by the **Insured** shall

- i. provided that the adjudicator must be independent of the parties to the contract
- ii. not allow for any decision of the adjudicator to be binding or to determine any dispute finally
- iii. not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial considerations
- iv. not prohibit the assistance or representation by advisers or representatives (whether legally qualified or not) at any adjudication
- v. not place any conditions upon the timing of commencement of legal or arbitration proceedings (other than adjudications pursuant to the Act)

Any dispute or difference arising hereunder between the **Insured** and the **Insurer** shall be referred to the arbitration of a Queen's Counsel to be agreed upon by both parties or in the absence of agreement by a QC nominated by the Chairman of the Bar Council the **Insurer** agree to pay the costs of such referral except where indemnity has been denied by the **Insurer** and the QC upholds such decision

#### 4. Overseas personal liability

The indemnity provided by this Policy shall apply to

- a. the **Insured**
- b. at the request of the **Insured**
  - i. any director official or **Employee** of the **Insured**
  - ii. any spouse or child of the persons stated in a) or b) i) above who are accompanying such persons
  - iii. in respect of liability incurred by such persons in a personal capacity in connection with an occurrence happening during the **Period of Insurance** in any country whilst on a temporary visit to such country in connection with the **Business**

Provided that

1. any person entitled to indemnity under this Extension shall as though they were the **Insured** be subject to the terms conditions and limitations of this Policy insofar as they can apply
2. nothing in this Extension shall increase the liability of the **Insurer** to pay any amount exceeding the Limit of Indemnity regardless of the number of persons claiming to be indemnified
3. the **Insurer** shall not provide indemnity against
  - a. contractual Liability
  - b. liability for which indemnity is provided by any other insurance
  - c. liability in respect of loss of or damage to property belonging to or in the custody or under the control of any person entitled to indemnity under this Extension
  - d. liability in respect of **Bodily Injury** (as defined for Sections 2B & C) to any person entitled to indemnity under this Extension
  - e. liability caused by or arising from
    - i. the ownership or occupation of land or buildings
    - ii. the carrying on of any business profession trade or employment
    - iii. the ownership possession or use of animals other than horses or domestic dogs or cats

#### 5. Compensation for court attendance

In the event of any of the persons stated below attending court as a witness at the request of the **Insurer** in connection with a claim in respect of which the **Insured** is entitled to indemnity under this Section the **Insurer** will provide compensation to the **Insured** at the following rates per day for each day on which attendance is required

- a. any director or partner of the **Insured** GBP 250
- b. any **Employee** GBP 100

#### 6. Principals

Where the **Insured** so requests the **Insurer** agrees to indemnify any Principal of the **Insured** but only to the extent that such liability arises solely out of the work performed for the Principal by or on behalf of the **Insured** and such Principal shall be subject to and comply with the terms, Conditions and Exclusions herein and this clause shall in no way operate to increase the Indemnity Limits as stated in the Schedule.

#### 7. Indemnity to others

At the request of the **Insured** the indemnity granted extends to:

- a. any party who enters into an agreement with the **Insured** for any purposes of the **Business** but only to the extent required by such agreement to grant such indemnity and subject always to Exclusion 3.c) to Section 2B and Exclusion 5. to Section 2B;
- b. officials of the **Insured** in their business capacity arising out of the performance of the **Business** and/or in their private capacity arising out of their temporary engagement of the **Insured's Employees**;
- c. any person or firm arising out of the performance of a contract with the **Insured** constituting the provision of labour only;
- d. the officers, committee and members of the **Insured's** canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;
- e. the personal representatives of any person indemnified by reason of this Extension in respect of liability incurred by such person; provided always that all such persons or parties shall observe fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the **Insured**.

All General Extensions are subject otherwise to the Policy terms Conditions Limitations and Exclusions

#### Section 2D – Contractors All Risks

##### Operative clause to section 2D

The **Insurer** will indemnify the **Insured** as stated in the schedule by payment or at the **Insurers** option reinstatement or repair in respect of physical loss or physical damage arising from any cause not otherwise excluded and occurring anywhere within the **Territorial Limits** during the Period of Insurance to property which is being used or is intended for use in connection with the works on any contract site which is the subject of this Policy such property shall include

1. The works whether permanent or temporary materials incorporated or for incorporation therein other than by item 2. below being the property of the **Insured** or for which the **Insured** are responsible including all transits in respect of any contract or work undertaken whether such contract or work was commenced during the Period of Insurance or otherwise Provided that the

**Insurer** shall be under no liability in respect of contracts originally scheduled to be of longer duration than two years (exclusive of the maintenance period) or with an estimated contract value at inception not exceeding GBP 2,000,000 unless otherwise agreed

2. Contractors` plant tools and equipment demountable and temporary buildings and/or caravans and/or other items of a like nature and materials and/or stores and/or other property of whatsoever nature used or intended for use in connection with any contract works being undertaken be the **Insured** and insured under this policy all being the property of the **Insured** under the Contractors Plant Association conditions or conditions no more onerous including transit by road rail or inland waterways
3. **Employees** Effects for which the **Insured** is responsible whilst on site or for which the **Insured** is responsible under the terms of any joint working agreement the indemnity provided is limited to GBP 500 per **Employee** unless otherwise agreed

## Exclusions to Section 2D

No indemnity is provided in respect of

1. consequential loss loss of use penalties for delay or non-completion or liquidated damages
2. loss of or damage to
  - a. aircraft aero spatial devices or hovercraft
  - b. waterborne craft or vessels other than safety boats non-self propelled craft up to 20 feet in length on or about the contract site
3. loss of or damage to mechanically propelled vehicles other than
  - a. vehicles designed primarily to operate as tools of trade (which shall be deemed to include any plant designed to operate on or about a contract site)
  - b. other vehicles brought on to a site for use only on such site
4. All costs rendered necessary by defects of material workmanship design plan or specification and should damage occur to any portion of the Property Insured containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage For the purposes of this Section and not merely this Exclusion the Property Insured shall not be regarded as lost or damaged solely by virtue of the existence of any defect in design plan specification materials or workmanship in the Property Insured or any part thereof
5. the cost of making good
  - a. mechanical or electrical breakdown or derangement
  - b. wear tear and gradual deterioration

but this Exclusion shall be limited to the parts immediately affected and shall not apply to accidental loss or damage arising in consequence thereof

6. the cost of making good any form of corrosion erosion rust oxidation mildew howsoever the same may arise
7. loss of or damage to stock and materials in trade and/or materials for incorporation into the contract works whilst away from any contract site unless in transit
8. loss of or damage to cash notes postal and/or money orders cheques stamps or negotiable Instruments of whatsoever nature or other securities for money
9. loss of or damage to any part of the property insured arising out of the works being taken into use or occupation (except for testing and commissioning when applicable) unless the **Insured** shall give notice to the **Insurer** as soon as possible and shall agree to pay such additional premium as the **Insurer** may reasonably require  
This exclusion shall not apply
  - a. to the use of any show house with a value of up to GBP 250,000 and contents with a value of GBP 50,000
  - b. during the period of 14 days from the date of issue by the Engineer of a Certificate of Completion when a contract is subject to the Standard Conditions of Contract of the Institute of Civil Engineers or equivalent conditions of contract
10. any loss of property either by disappearance or by shortage if such disappearance or shortage is only revealed when a routine inventory is made or is not traceable to an individual event or occurrence
11. destruction or damage directly occasioned by pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
12. loss or damage for which the **Insured** is relieved of responsibility under the terms of any contract
13. loss or damage arising from directional drilling operations unless otherwise agreed
14. the cost of normal upkeep or making good
15. loss or damage which under the terms or conditions of the contract is the responsibility of the Employer unless the **Insured** has agreed under the terms or conditions of the said contract to accept responsibility to indemnify or arrange insurance on the Employers behalf in respect of such liability loss or damage
16. loss or damage caused by the wilful negligence of the **Insured**
17. loss or damage to existing structures and/or existing property being worked upon unless otherwise agreed
18. loss or damage arising from transits by sea or air
19. loss or damage caused by contamination of asbestos or asbestos dust
20. loss or damage arising from Terrorism as follows  
Notwithstanding any provision to the contrary within

this Policy or any endorsement thereto unless an endorsement is issued that expressly overrides the provisions contained herein the Policy does not provide indemnity

- a. for loss destruction of or damage to any property whatsoever or any loss or cost or expense of whatsoever nature resulting or arising therefrom or any consequential loss
- b. against any legal liability of whatsoever nature directly or indirectly caused by resulting from or contributed to by or in connection with
  - i. any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss
  - ii. any action taken in controlling preventing suppressing or in any way relating to any act of **Terrorism**

If the **Insurer** allege that by reason of this Exclusion any loss liability damage cost or expense or consequential loss is not covered by this Policy the burden of proving the contrary shall be upon the **Insured**

- 21. loss or damage arising from contracts involving work in on over or adjacent to tidal waters tunnels (but not cut and cover) galleries with an estimated contract value greater than GBP 25,000 unless specifically agreed.
- 22. theft from unattended vehicles away from the **Insured's** premises unless any such vehicle is alarmed or is immobilized by the removal of the rotor arm battery lead or distributor cap or any such vehicle is in a locked and secure compound or garage
- 23. loss or damage to any contract or plant or equipment within the High Radio Active Zone (HRZ) of any nuclear installation
- 24.

- a. any damage to data which shall include
  - i. loss destruction or corruption of data whether in whole or in part
  - ii. unauthorised appropriation use access to or modification of data
  - iii. unauthorised transmission of data to any third parties
  - iv. damage arising out of any misinterpretation use or misuse of data
  - v. damage arising out of any operator error in respect of data
- b. any damage to property insured arising directly or indirectly from
  - i. the transmission or impact of any virus
  - ii. unauthorised access to a System
  - iii. interruption of or interference with electronic means of communication used in the conduct of the **Insured's** business including but not limited to any diminution in the performance of any website or electronic means of communication
  - iv. failure of System
  - v. any of the matters described in paragraph (a) above but this shall not exclude damage to property insured caused by fire lightning explosion earthquake aircraft or other aerial devices or articles dropped therefrom riot civil commotion except in Northern Ireland strikers locked out workers persons taking part in labour disturbances storm flood escape of water from any tank apparatus or pipe impact by any road vehicle or animal accidental escape of water from automatic sprinkler installation subsidence ground heave or landslip provided that such damage does not arise by reason of any malicious act or omission or theft

### For the purposes of this Exclusion

Damage	means accidental loss or destruction of or damage to the property insured and any accidental loss or destruction or damage to data
Data	means information represented or stored electronically including but not limited to code or series of instructions operating systems software programs and firmware
Failure of a System	means the complete or partial failure or inability whether in terms of availability functionality and/or performance or otherwise of a System whether or not owned by the <b>Insured</b> to operate at any time as desired as specified in the circumstances of the <b>Insured's</b> business
System	includes computers other computing and electronic equipment linked to computer hardware electronic data processing equipment Microchips and anything which relies on a Microchip for any part of its operation and includes for the avoidance of doubt any computer installation
Microchip	a unit of packaged computer circuitry manufacture in small scale and made for program logic and/or computer memory purposes and expressly including integrated circuits and microcontrollers

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Virus

programming code or series of instructions designed to achieve an unexpected unauthorised and/or undesirable effect or operation when loaded onto a System transmitted between Systems by transfer between computer Systems via network extranets internet or electronic mail or attachments thereto or via floppy diskettes or CD-ROMS or otherwise and whether involving self-replication or not

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## Memoranda to Section 2D

### 1. Professional fees

This section includes architects' surveyors' consulting engineers' and other professional fees necessarily incurred in connection with the reinstatement of property insured

Provided that

- a. such fees shall not exceed those authorised under the scale of the appropriate professional body or institute regulating such changes subject to a maximum of 15% of the estimated contract value or GBP 250,000 whichever is the less
- b. the **Insurer** shall not provide indemnity against any fees incurred in preparing or pursuing any claim

### 2. Debris removal

This Section includes costs and expenses necessarily incurred in respect of removal of debris dismantling demolition (including off site storage) shoring propping and clearance of drains and sewers following loss or damage insured up to 10% of the amount of the loss

### 3. Speculative housebuilding

In the event of speculative housing being completed but unsold cover under this Section shall continue for a period of six months unless otherwise agreed from the date of practical completion but the **Insurer's** liability shall not exceed GBP 250,000 any one occurrence

### 4. Plans

The property insured by Paragraph 1 of the Operative Clause shall be deemed to include plans and specifications or other contract documentation of the works or temporary works but only for the cost of reproducing such plans specifications and documentation up to a maximum limit of GBP 10,000

### 5. General interest

This section duly notes the interest of any Bank Finance Company Building Society and any other institution or concern that have a financial interest in the property insured by this Section

### 6. Maintenance

Where required by contract this Section includes physical loss or physical damage

- a. occurring during the maintenance period (not exceeding twenty four months unless otherwise agreed) from a cause arising before the issue of a certificate of practical completion
- b. occasioned by the **Insured** in the course of fulfilling his obligations during the maintenance period as required by the terms of the contract

### 7. Occurrence

The word "occurrence" shall mean all individual losses arising out of and directly occasioned by one event However the duration and extent to any "occurrence" so defined shall be limited to

72 consecutive hours as regards hurricane typhoon windstorm rainstorm hailstorm and/or tornado

72 consecutive hours as regards earthquake seaquake tidal wave and/or volcanic eruption

### 8. Employees effects definition

It is understood and agreed that for the purpose of this Section the **Insured's employees** effects shall include physical loss of or physical damage to tools clothing and personal effects (but not furs money or jewellery) belonging to any

- a. director or **employee** of the **Insured**
- b. clerk of works resident engineer or his **employee** whilst on or about any contract site

### 9. Adjudication awards clause

- a. The **Insurer** will indemnify the **Insured** against an award (or any part thereof) made in respect of a construction dispute and resulting from an adjudication procedure which complies with the provisions of the Housing Grants Construction and Regeneration Act 1996
  - i. indemnity shall only apply to the extent that such award relates to loss damage or liability for which an indemnity is provided by this Section
  - ii. any payment made by the **Insurer** in respect of such an award shall be made without prejudice to any other rights of the **Insurer's** under this Section
- b. It is a condition precedent to any liability of the **Insurer** to make payment under this Memorandum where there is a construction contract dispute relating to loss damage or liability for which an indemnity is or may be provided by this Memorandum
  - i. any notice received by the **Insured** from any party of intention to refer such dispute for adjudication shall be forwarded to the **Insurer** within five days of receipt
  - ii. the **Insured** shall provide prior notice to the **Insurer** of any intention by the to refer any such dispute or adjudication
  - iii. the **Insured** shall not accept any award made by adjudicator to such dispute as being final without the prior agreement of the **Insurer**

### 10. Joint code of practice

In respect of all contracts or work whose estimated value (including free issue materials) exceeds GBP 1,000,000 the **Insured** undertakes to comply with the Joint Code of Practice on the Protection from Fire of



Construction Sites and Buildings Undergoing Renovation Fifth Edition dated January 2000 (the Joint Code) or any subsequent edition thereof

The appointed representative of the **Insurer** shall have the right at all reasonable times to enter inspect any such contract site for the purpose of ensuring that the conditions of such sites or work in all respects comply with the Joint Code

For the purpose of Paragraph 6.3 of the Joint Code any building site including those where demolition alterations fitting out renovations refurbishment or repair work is carried out whose estimated value (including free issue materials) exceeds GBP 20,000,000 shall be deemed to be a "Large Project"

In the event of a breach of the Joint Code the **Insurer** may inform the Employer and management of the **Insured** the nature of the breach and may specify the required remedial measures (the Remedial Measures) and the reasonable period of time in which such Remedial Measures are to be completed If the **Insured** should fail to complete such Remedial Measures within the specified time the **Insurer** may confirm the same by notice in writing given by actual delivery or registered post or by recorded delivery to both the Employer and the **Insured** at their respective addresses nominated by the **Insured** at the inception of cover or as otherwise subsequently amended.

Such notice shall at the discretion of the **Insurer** either suspend or cancel the Policy from the date named in the notice which shall not be less than 30 days from the date of delivery of such notice it being understood the Policy may be reinstated with effect from the date on which the **Insurer** is satisfied that the Remedial Measures have been completed

This Memorandum shall not in itself be considered a condition precedent to liability but its inclusion shall not prejudice waive or remove the rights of the **Insurer** or the **Insured** under the terms exceptions and conditions of the Section

## 11. European union and public authorities requirements

The **Insurer** will indemnify the **Insured** for such additional costs of reinstatement of the works as may be incurred with the **Insurers'** written consent in complying with the stipulations of the European Union legislation or building or other regulations under or framed in the pursuance of Any Act of Parliament or bye-laws of any public authority first imposed upon the **Insured** following damage provided that the reinstatement is completed within twelve months of the occurrence of loss or damage or within such further time as the **Insurers'** may in writing allow

Provided that the Underwriters shall not be liable in respect of costs for

- a. requirements relating to any undamaged part of the works other than foundations (unless foundations are specifically excluded from this Section)

- b. any rate tax duty development or other charge or assessment which may arise out of capital appreciation as a result of complying with any of the regulations or requirements referred to

## 12. Expediting expenses

In the event of loss of or damage to Items 1 and 3 of the Property insured the cost of repair replacement admitted under this Section shall subject to the consent of the **Insurer** include all additional costs of overtime weekend shift work plant hire charges express delivery (including air freight) necessary and reasonably incurred in expediting repair reinstatement or replacement of such loss or damage (but excluding any such costs to expedite the completion of any construction erection or installation of property not lost or damaged) provided that the liability of the **Insurer** shall not exceed GBP 50,000 in respect of each and every loss or series of losses arising out of the originating cause

## 13. Continuing hiring charges

Cover under this Section is extended to indemnify the **Insured** in respect of their legal liability for the payment of hiring charges in respect of plant hired in by the **Insured** under Contractors Plant Association Conditions of Hire or conditions imposing similar liability whilst such plant is out of use following loss or damage for which an indemnity is provided by this Section (or which would be provided thereunder but for the application of an Excess Clause)

The **Insurer** will not be liable under this extension for

- a. liability for a longer period than three months or GBP 50,000 whichever is the least
- b. the first seven days such plant is out of use

## 14. Negligent breakdown

The **Insurer** will indemnify the **Insured** in respect of liability assumed under Clause 9(d) of the Model Conditions of Hiring of Plant of the Construction Plant Hire Association or similar liability assumed under the Scottish Plant Owners Association Conditions or other Conditions no more onerous than these

## 15. Immobilised plant

In the event of constructional plant and/or equipment becoming unintentionally immobilised in any physical situation in or about the site of an **Insured** contract the necessarily incurred cost of recovery and/or withdrawal shall be "damage" within the meaning of this Section

Always provided that the total liability in respect of the actual damage and the recovery cost shall not exceed the total value of the item at the time of damage

No indemnity shall be provided hereon in respect of the cost of recovery and/or withdrawal following electrical or mechanical breakdown or derangement where such is the sole reason for the recovery and/or withdrawal

## 16. Increase

If during the Period of Insurance the actual reinstatement value of the property insured shall be in excess of the sum insured stated in the Schedule then the sum insured shall be deemed to be increased by the amount of such excess but not exceeding in all 110% of the sum insured stated in the Schedule

## 17. Automatic reinstatement

In consideration of the sum insured not being reduced by the amount of any loss or damage the **Insured** shall pay the appropriate additional premium calculated at the pro rata of the applicable rate on the amount of the loss or damage from the date thereof to the expiry of the period of insurance.

## 18. Offsite storage

Notwithstanding Exclusion 7 the **Insurer** will indemnify the **Insured** in respect of physical loss of or physical damage to finished materials or goods designated for and awaiting incorporation into specific contract works while such goods are temporarily held in store away from the contract site but not while such materials or goods being worked upon subject to a limit of GBP 50,000 any one occurrence

## Exclusions Applicable To Sections 2A, 2B, 2C & 2D

This Policy does not provide indemnity in respect of liability

1. arising in connection with
  - a. any work of demolition involving
    - i. ball and chain
    - ii. a method designed and/or intended to demolish any structure or part thereof in one sudden and uninterrupted process
    - iii. the use of explosives
  - b. structural construction alteration or repair of transport tunnels
  - c. the construction or critical maintenance of hydroelectric or reservoir dams
  - d. the construction alteration or repair of blast furnaces
  - e. work in connection with rail signalling equipment or the laying maintenance or repair of railway track other than private sidings
  - f. any shipbuilding or ship repairing other than contractors working on board a vessel unless such work is critical to the safety of the vessel
  - g. work on the structure or controls of any aircraft
  - h. work on motor vehicles licensed for road use where such work is critical to the safety of the vehicle

2.

- a. directly or indirectly occasioned by happening through or in consequence of war invasion acts of foreign enemies hostilities (whether war be declared or not) civil war rebellion revolution insurrection military or usurped power or confiscation or nationalisation or requisition
  - b. directly or indirectly caused by or contributed to by or arising from
    - 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 but as far as concerns Section 2A this Exclusion will only apply where such legal liability is  
that of any principal  
accepted under agreement and would not have attached in the absence of such agreement
3. the amount of any **Excess** shown in the Schedule including costs and expenses
  4. which forms the subject of insurance by any other Policy and this Policy shall not be drawn into contribution with such other insurance;

## Conditions Applicable To Section 2A, 2B, 2C & 2D

Conditions 1,2,and 3 below are conditions precedent to the **Insured's** right to be indemnified under Section 2 of this Policy.

### 1. Claims procedure

The **Insured** shall give written notice to the **Insurer** as soon as reasonably practicable of any incident that may give rise to a claim under this policy and shall give all such additional information as the **Insurer** may require Every letter of claim writ summons or process and all documents relating thereto and **any other written notification** of claim shall be forwarded **unanswered** to the **Insurer** immediately they are received

***The Insured shall at all times in addition to their obligations set out above afford such information to and co-operate with the Insurer or their appointed agents to allow the Insurer to be able 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***

In the event of any occurrence giving rise to loss or damage under Section 2D of this Policy the **Insured** shall take such immediate action as is necessary to minimise the loss and in the case of property which has been lost stolen maliciously or wilfully damaged the **Insured** shall give immediate notice to the Police

and take all practicable steps to recover property lost and to discover the person or persons responsible for such loss or damage. If Condition 9 of this Policy is operative the **Insured** shall notify the National Plant & Equipment Register Bath and West Buildings Lower Bristol Bath BA2 3EG Tel No. 01225 464599 in respect of any theft of any plant or equipment.

No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without written consent of the **Insurer** who shall be entitled to take over the conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or **Damages** or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.

If any difference shall arise as to the amount to be paid under this Section (liability being otherwise admitted) such difference shall be referred to an Arbitrator to be appointed by the parties in accordance with the statutory provisions for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an Award shall be a condition precedent to any right of action against the **Insurer**.

## 2. Alterations in risk

The **Insured** is required to notify the **Insurer** of all material facts or alterations in the risk which come to his knowledge or arise during the currency of this Policy.

## 3. Discharge of liability

The **Insurer** may at any time pay to the **Insured** in connection with any claim or series of claims under this Policy to which a Limit of Indemnity applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and be under no further liability in connection with such claims.

## 4. Apportionment of defence costs

Except where the Limit of Indemnity is inclusive of **Defence Costs** if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim the liability of the **Insurer** to pay all **Defence Costs** in connection therewith shall be limited to such proportion of the said **Defence Costs** as the Limit of Indemnity bears to the amount paid to dispose of a claim.

## 5. Other Insurance

If any claim covered by this policy is covered in whole or in part by any other insurance the **Insurer** shall have no liability to contribute to such claim.

## 6. Precautions

The **Insured** shall take all reasonable precautions or steps

- a. to observe and comply with all Statutory or local authority laws, obligations and requirements
- b. in the selection of employees or sub-contractors
- c. to see that construction plant equipment and machinery are substantial and sound and in proper order and fit for the purposes for which they are used.

## 7. Temporary precautions

If any defect in the contract works or construction plant equipment and machinery shall be discovered the **Insured** shall until such defect has been made good cause temporary precautions to be taken as the circumstances may require. The **Insured** shall at all times take all reasonable precautions to prevent accidents, injury, loss or damage.

## 8. Subrogation

Any claimant under this policy shall at the expense of the **Insurer** do and concur in doing and permit to be done all such acts and things that may be necessary or reasonably required by the **Insurer** for the purpose of enforcing any rights and remedies of or obtaining relief or indemnity from other parties to which the Underwriters shall be or could become entitled or subrogated upon its paying for or making good any Damage insured by this Policy whether such acts and things shall be or become necessary or required before or after the indemnification by the **Insurers**.

## 9. The national plant and equipment register

It is a condition of this section that all construction plant, tools, machinery and equipment with an individual value in excess of GBP 5,000 must be registered with The National Plant & Equipment Register Bath and West Buildings Bristol Road Bath BA2 3EG Tel No 01225464599 within 60 days of inception. Failure to do so will mean cover provided under item No.3 of the schedule is cancelled.

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