

Excess Professional Indemnity Insurance

PI XL AGG 0417

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.

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 the Policy.

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 reasonable costs and expenses incurred, with the **Insurer's** prior written consent, 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**. It does not include the **Insured's** own overhead costs and expenses.

Indemnity limit

shall mean the **Insurer's** total liability to pay **Damages** and claimant's costs, and **Defence costs and expenses** and shall not exceed the sum(s) stated in the Schedule in respect of any one claim or series of claims arising out of one originating cause and in total for all claims first made during the **Period of insurance**. If more than one person is entitled to an indemnity under the terms of this Policy then the **Insurer's** total liability to all such persons shall not exceed the **Indemnity limit**.

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.

Jurisdiction

means the jurisdiction stated in the Schedule. 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.

Period of insurance

is that as stated in the Schedule.

Underlying insurance(s)

shall mean all policies stated in the Schedule.

Underlying insurance limit

shall mean the amount as stated in the Schedule.

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 and which causes damage or loss to data or the **Computer system**.

Insuring Clause

In consideration of the premium having been paid to the **Insurer**, the **Insured** is indemnified, subject to the terms, conditions, limitations and exclusions of the **Underlying insurance(s)**, except where otherwise provided in this Policy, as follows:

1. Indemnity

Up to the **Indemnity limit**, in excess of the **Underlying insurance limit**.

If the **Underlying insurance limit** is written on an aggregate basis and such aggregate limit is partially exhausted by reason of any claim paid by underlying insurers, this Policy will apply in excess of the reduced underlying insurance limit. If the aggregate underlying insurance limit is totally exhausted, this Policy will continue in force as if it were the primary policy subject to the original **Underlying insurance** terms, conditions, limitations and exclusions except as otherwise provided in this Policy.

The **Insured** shall not be indemnified unless and until the insurers of the **Underlying insurance** shall have paid or are held liable to pay the full amount of their indemnity.

Exclusions

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

1. Claims or Circumstances known at inception

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

2. Other Insurance

In respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance other than as excluded under Exclusion 9;

3. 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;

4. 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;

5. 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;

6. 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.

7. 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;

8. Virus

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

9. Aggregate Sub-Limits

Arising as a result of any claim made under an insuring clause contained in the **Underlying insurance(s)** that is subject to a sub-limit or inner aggregate limit that is less than the **Underlying insurance limit**;

10. US / Canadian Jurisdiction

In respect of an action for **Damages** brought in the United States of America, its territories and/or possessions or Canada (including the enforcement there of a judgment or finding of another court or tribunal that is outside the United States of America, its territories and/or possessions or Canada);

11. Deliberate acts

Arising directly or indirectly from any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**.

Notification And Claims Conditions

1. Claim/Circumstance Notification

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

- 1.1 shall inform the **Insurer** as soon as practicable, provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, of the receipt, awareness or discovery of:-

- a. any claim made against them
- b. any notice of intention to make a claim against them
- c. any **Circumstance**

where the maximum potential liability from any such claim or **Circumstance** exceeds 50% of the **Underlying insurance limit**.

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

- 1.2 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.

- 1.3 shall inform the **Insurer** as soon as practicable, if the aggregate **Underlying insurance limit** has been, or might reasonably be expected to be, exhausted by 50% or more.

2. Conduct of Claims

- 2.1 Following notification under Notification and Claims 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.

- 2.2 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.

Should any recovery be made after a payment has been made under this Policy then such recovery amount will be treated as having been received before the payment made by **Insurers** and the appropriate adjustment will be made between the **Insured**, Underlying insurers and the **Insurer** as soon as practicable.

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 fourteen 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. Conditions Precedent

As conditions precedent to their right to be indemnified under this Policy the **Insured**;

- a. shall maintain the **Underlying insurance(s)** in full force and effect during the currency of this Policy, unless the Underlying insurance limit is written on an aggregate basis and has been fully exhausted
- b. shall inform **Insurers** as soon as practicable of any material alteration to the terms of the **Underlying insurance(s)**. No such alteration to the **Underlying insurance(s)** shall be effective in extending the scope of this Policy unless agreed in writing by the **Insurer**.

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 confers 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

Telephone: +44 (0)30 0123 9123

Website: 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

Please note that any information provided to us will be processed by us and our agents in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties. We may also send the information in confidence for process to other companies acting on their instructions including those located outside the European Economic Area.

Contact Us

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