

# Professional Indemnity Insurance

PI RICS 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.*

### Asbestos surveys

shall mean either a management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2012, or any comparable survey or inspection, whether of commercial or residential land or property.

### Asbestos risk

shall mean:

- a. **Bodily injury** or fear of suffering **Bodily injury**;
- b. physical impairment or damage to any ecological system, land or property;
- c. consequential, economic or financial loss

due to the presence or release of asbestos or asbestos-containing materials in whatever form or quantity.

### Bodily injury

shall mean injury, sickness, disease, psychological injury, emotional distress, nervous shock or death suffered or sustained by any person.

### 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.

### 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, 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. However, where Exclusion 27 is stated in the Schedule as not applicable, in the case of a claim arising from any survey and/or valuation prepared:

- a. for or on behalf of any purchaser prior to acquisition; or
- b. for or on behalf of any investor prior to investment; or
- c. for lending purposes

the first amount paid shall be the greater of GBP 7,500 or as

stated in the Schedule. 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:

- a. in the case of **Asbestos risks** claims the sum of GBP 250,000 inclusive of **Defence costs and expenses** in respect of any one claim or series of claims arising out of one originating cause and in total for all claims made during the **Period of insurance**;
- b. in all other cases (except where specific sums are stated in the Insuring Clauses to this Policy) the sum stated in the Schedule in respect of any one claim or series of claims arising out of one originating cause

and, in each case, shall be regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this Policy. For the avoidance of doubt, **Indemnity limit a)** is not additional to and shall not increase the sum stated in the Schedule.

### 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. It shall also mean the estate, heirs and executors and/or legal or personal representatives of any such person.

### 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.

### Personal appointment

is any individual appointment of a professional nature arising out of the ordinary professional activities of the **Insured** other than any appointment as a director or officer of a company or as a trustee.

### Professional business

is the professional services of the **Insured's** business as stated in the Schedule including the holding of any **Personal appointment**.

## Insuring Clauses

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

### 1. Civil liability

Up to the **Indemnity limit** for claims first made against the **Insured** during the **Period of insurance** in respect of civil liability including claimant's costs and arising out of the ordinary course of the **Professional business** by the **Insured** and/or by others acting for and/or on behalf of the **Insured**.

### 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; and
- 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. Ombudsman's awards

In addition the **Insured** is indemnified up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance** in respect of any award made by an ombudsman to the extent that it is legally enforceable against the **Insured** in respect of any case accepted by the ombudsman for review in his position as ombudsman under any recognised scheme and first notified by the ombudsman to the **Insured** during the **Period of insurance**.

Where an ombudsman makes an award which is rejected by the claimant who then pursues the matter through the courts both the complaint to the ombudsman and all subsequent court proceedings

shall constitute one originating cause for the purposes of this Policy.

#### 4. Costs of estate agents' and health and safety legislation

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, in respect of 80% of legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any proceedings brought under:

- a. The Consumer Protection from Unfair Trading Regulations 2008; and/or
- b. The Business Protection from Misleading Marketing Regulations 2008; and/or
- c. Estate Agents Act 1979, and/or
- d. The Health and Safety at Work etc Act 1974, and/or
- e. The Health and Safety at Work (Northern Ireland) Order 1978, and/or
- f. The Construction (Design and Management) Regulations 2015, and/or
- g. The Corporate Manslaughter and Corporate Homicide Act 2007 and/or
- h. The Bribery Act 2010; and/or
- i. The Data Protection Act 1998; and/or

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 ordinary course of the **Professional business**;
- b. The **Insurer** believes that defending such proceedings could protect the **Insured** against any concurrent or subsequent claim in respect of which indemnity would be available under this Policy;
- c. The **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- d. 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;
- e. For the purposes of this Insuring Clause only the amount of the **Excess** shall be GBP 1,000.

#### 5. 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.

#### 6. Costs for representation

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance** 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 Policy. For the avoidance of doubt Costs for Representation cover does not apply to Insuring Clause 5.

#### 7. Court attendance

Up to a maximum of GBP 10,000 in the aggregate in the **Period of insurance**, in the event that the legal advisors acting for the **Insured** require any of the **Insured** or any other relevant party (not including expert witnesses) to attend Court or any arbitration or adjudication hearing as a witness of fact in connection with any claim, in respect of which the **Insured** is indemnified under this Policy, at the following rates for each day or part thereof on which attendance is required:

Any principal, partner, member or director of the <b>Insured</b>	GBP200;
Any <b>Employee</b>	GBP100;
Any other relevant party	up to GBP200.

#### 8. Data protection defence costs

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, for reasonable and necessary legal costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, in the defence of any criminal proceedings brought against the **Insured**, during the **Period of insurance**, under the Data Protection Act 1998 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 ordinary course of the **Professional business**;
- 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 and expenses 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), 5), 6), 7) and 8) is not additional to and shall not increase the **Indemnity limit**.

## Exclusions

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** or any loss, damage or destruction of property unless such claim arises directly from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

### 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 1 provided always that:

- a. no indemnity shall be given in respect of any claim arising out of such dishonesty, fraud or perpetration of malicious or illegal act or omission on the part of any person after discovery by the **Insured**, in relation to that person, of reasonable cause for suspicion of fraud, dishonesty or perpetration of malicious or illegal act or omission;
- b. any dishonesty, fraud or perpetration of malicious or illegal act or omission committed by a person or persons acting in concert shall be deemed to be a single claim for the purposes of this Policy;

- c. the annual accounts and client accounts (where applicable) of the **Insured** have been prepared and/or certified by an independent and properly qualified accountant or auditor;

### 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 but only to the extent that such duty is more onerous than any duty that would otherwise be implied by common law or statute save for any liability arising out of the ordinary course of the Professional business 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. 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 related company or sub-contractor of the **Insured**;

### 7. Insolvency/bankruptcy of Insured

arising out of or relating directly or indirectly to the insolvency, liquidation, receivership or bankruptcy of the **Insured**. However, this exclusion shall not apply to:

- a. any claims in respect of monies held on behalf of third parties;
- b. any claim in respect of which, but for their insolvency or bankruptcy, the **Insured**, would have been indemnified under this Policy;

### 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. However in the event of a claim arising from the **Insured's** negligent structural design or specification or failure to report a structural defect in a property this exclusion shall not apply but the indemnity provided by this Policy shall extend only to that part of any claim which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure. For the avoidance of doubt:

- a. no indemnity shall be given in respect of any claim for the cost of remedying and/or rectifying any loss of or damage to the land and environment or any loss of value; and
- b. for the purpose of this exclusion only, asbestos is not deemed to be a contaminant;

## 9. 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;

## 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 in so 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 Policy;

## 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 provided always that this exclusion shall not apply in respect of any claim arising out of the ordinary course of the **Professional business** in consequence of a breach of professional duty.

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 risks**. This exclusion shall not apply where the claim arises as a direct result of a negligent act error or omission committed (or alleged to have been committed) by the **Insured** in the ordinary course of the **Professional business** of the **Insured** involving **Asbestos risks** to the extent that the claim is:

- a. for the cost of re-performance, rectification or remediation of the **Insured's** work; or
- b. in respect of any diminution in value of buildings and/or structures (or any part of either or both of them) arising out of the survey and/or valuation by the **Insured**

undertaken in accordance with RICS Practice Statements or standard market procedures relating to surveys and valuations.

Provided always that no indemnity shall be granted in respect of:

- i. damage to property other than in respect of the cost of re-performance of the **Insured's** work and/or rectification or remediation in relation to that part of the building and/or structure and arising directly from the negligent (or allegedly negligent) act error or omission of the **Insured**;
- ii. any claim arising directly or indirectly from **Bodily injury**;
- iii. any claim arising directly or indirectly from **Asbestos surveys** carried out by the **Insured**;

## 21. Other appointments

made against any **Insured** in their capacity as:

- 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. Patents

notwithstanding insuring Clause 1, arising directly or indirectly from the infringement of any patent;

## 24. 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 arises directly from the acts or omissions of the **Insured**;

## 25. 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 arises directly from the acts or omissions of the **Insured**;

## 26. Arbitration

any arbitration award made where the seat of the arbitration was located outside England, Wales, Scotland or Northern Ireland save with the prior written consent of the **Insurer**;

## 27. Surveys and valuations

where this exclusion is stated in the schedule as being applicable then the **Insurer** shall not be liable to indemnify the **Insured** against any claim arising from any survey or valuation report prepared by or on behalf of the **Insured** except:

- a. for the purpose of certifying payments due to contractors or measuring quantities; or
- b. for the purpose of establishing a price for the purpose of marketing a property for sale; or
- c. any valuation solely for probate or matrimonial purposes;

## 28. Persons undertaking surveys or valuations

where exclusion 27 is stated in the schedule as not being applicable then the **Insurer** shall not be liable to indemnify the **Insured** against any claim arising directly or indirectly out of a survey unless it was undertaken by:

1. a Fellow or Professional member of the Royal Institution of Chartered Surveyors (RICS); or
2. a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
3. a Fellow or Associate of the Architects and Surveyors Institute (ASI); or
4. a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
5. a Fellow or Associate of the Royal Institute of British Architects (RIBA); or
6. a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS); or
7. a partner, director, principal, member or **Employee** of the **Insured** with not less than 5 years experience of such work; or
8. any other person delegated by the **Insured** to undertake such work as part of their training provided that the work is supervised by a person holding a qualification of the kind listed in paragraphs 1 – 7 above;

## 29. Acting as contractor

arising directly or indirectly out of any agreement to provide construction or engineering works, or consultancy or design services where these are provided as part of an agreement to provide construction or engineering works, whether such works are provided by the **Insured** or by any sub-contractor of the **Insured**;

### 30. Market fluctuations

relating to the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is a result of normal or abnormal fluctuations in any financial, stock, commodity or other market and which are outside the influence or control of the **Insured**. This exclusion will not apply to any survey or valuation of any tangible property:

- a. for the purpose of any sale, proposed sale, purchase or proposed purchase; or
- b. for insurance or stock valuation purposes

where such survey or valuation is prepared by the **Insured** in the ordinary course of the **Professional business**;

### 31. Financial services

arising out of:

- a. any regulated activity within the meaning in the Financial Services and Markets Act 2000 (“**FSMA**”) even if, by virtue of an order of the Treasury under **FSMA**, the **Insured** is regarded as not carrying on regulated activity by way of business;
- b. any activity which, under **FSMA**, constitutes engaging in or communication or inducement to engage in investment activity;

### 32. Ombudsman

any costs or expenses associated with the investigation, conduct or settlement of any case(s) accepted by an ombudsman for review in his position as ombudsman;

### 33. Claims by Employees

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

## Special Notification Conditions

**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:
  - 1.1 the receipt of any such **Adjudication notice**;
  - 1.2 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**;
  - 1.3 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.



# 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**, 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 arising out of such notified matters 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, make any offer for or settle any claim, or incur any costs or expenses in connection with any such claim or **Circumstance**, without the prior 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

# General Conditions

## 1. Policy construction and disputes

English Law governs this Policy. In the event of any dispute arising between the **Insured** and the **Insurer** concerning this Policy the parties submit to the courts of England and Wales who shall have exclusive jurisdiction to determine any such dispute provided always that any dispute:

- a. as to the correct interpretation of the definition of **Professional business**; or
- b. as to whether the exception to Exclusion 20 applies shall be referred to arbitration in accordance with English law and procedure to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

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.

## 2. 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 caused 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 or omission. This waiver of subrogation will not apply to consultants or former consultants where a separate and valid professional indemnity insurance policy is maintained by or on behalf of those consultants.

### 3. 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 omission) 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.

### 4. Fraudulent claims

If the **Insured** shall make any claim under the policy knowing the same to be false or fraudulent, the **Insurer**:

- a. is not liable to pay that claim; and
- b. may recover from the **Insured** all previous payments made by the **Insurer** in respect of the claim; and
- c. may by notice to the **Insured** treat the policy as having been terminated with effect from the date of such false or fraudulent claim. The **Insurer** shall not be liable to the **Insured** in respect of the claim made or the notification of a **Circumstance** from the date of the fraudulent act. Such cancellation will not affect any liability the **INSURER** may have in respect of any claim notified prior to the notification of such false or fraudulent claim. The **Insurer** will not be obliged to return any premium.

### 5. 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. The **Insured** shall not assign or transfer their rights under the Policy without the written agreement of the **Insurer**.

### 6. Cancellation

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

### 7. 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.

### 8. 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.

### 9. Difference in conditions

This Policy is designed to provide the minimum insurance requirements of the RICS as per the Approved Minimum Wording.

In the event that there is any conflict between the terms and conditions of this Policy and those of the Approved Minimum Wording contained in any Prospectus for Approved Insurers or similar document issued by the **Insured's** relevant governing professional body then:

- a. those terms and conditions contained in the Approved Minimum Wording which are more favourable to the **Insured** shall take precedence over any terms and conditions contained in this Policy; and
- b. the **Indemnity limit** shall be the lower of (a) the minimum limit of indemnity required to be provided by the **Insured's** relevant governing professional body or (b) the sum(s) stated in the Schedule.

### 10. Non-disclosure

The Insurance Act 2015 ("the Act") has introduced a duty on the **Insured** that before the **Insured** enters into a contract of insurance, the **Insured** must make to the **Insurer** a fair presentation of the risk. This clause varies the terms of the Act in relation to the **Insurer's** remedy for a breach of duty of fair presentation.

- a. Where there has been a failure by the **Insured** to comply with their duty to make a fair presentation of the risk to the **Insurer** and such failure would entitle the **Insurer** to avoid this policy, the **Insurer** agree only to exercise their right to avoid this policy if the **Insured** has admitted, or the **Insurer** have established by way of a final adjudication in arbitration proceedings between the **Insurer** and the **Insured** commenced in accordance with General Condition 1 of this policy (including any appeal therefrom), that the **Insured** failed to make a fair presentation of the risk with the intention of misleading or deceiving the **Insurer**. Until such final adjudication (including any appeal therefrom) has been concluded, the **Insurer** shall continue to honour their obligations, and make payment, under the policy. Where the **Insurer** exercises their right to avoid the policy under this clause the **Insurer** may refuse all claims and need not return any of the premium paid by the **Insured**.

b. In any case where there has been a failure by the **Insured** to comply with their duty to make a fair presentation of the risk to the **Insurer** and where clause a) of this General Condition 10 does not apply:

- i. in the case of a claim first made against the **Insured** during the **Period of insurance** where:
  - a. the **Insured** had previous knowledge of the **Circumstances** relating to such claim, and
  - b. the **Insured** should have notified the same under any preceding policy but did not do so,

then, where the indemnity or cover under this policy is greater or wider in scope than that to which the **Insured** would have been entitled under such preceding policy (whether with other insurers or not), the **Insurer** shall only be liable to afford indemnity to such amount and extent as would have been afforded to the **Insured** by such preceding policy; and

- ii. regardless of whether or not clause i) applies, where the **Insurer** can demonstrate that, by reason of the **Insured's** failure to comply with their duty to make a fair presentation of the risk, the **Insurer** would not have written the policy, or would have written the policy but on different terms and conditions, then the **Insurer** shall be entitled to charge a just and equitable additional premium in light of the prejudice caused to the **Insurer's** interests by such failure to comply with that duty.
- iii. otherwise, save as set out in i) and ii) above, the **Insurer** shall not be entitled to any remedy by reason of the **Insured's** failure to comply with their duty to make a fair presentation of the risk where such failure was neither deliberate or reckless.

c. Where the **Insured's** breach of or non-compliance with any provision in the Notification and Claims Conditions in this policy has resulted in prejudice to the handling or settlement of any claim, the **Insurer** shall be entitled to reduce the indemnity afforded by this policy in respect of such claim (including **Defence costs and expenses**) to such sum as is just and equitable having regard to the prejudice caused to the **Insurer's** interests by the breach or non-compliance.

## 11. 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.

## 12. 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.

## 13. 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

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.

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## Contact Us

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mail@tmhcc.com  
tmhcc.com

Tokio Marine HCC is a trading name of HCC International Insurance Company plc, which is a member of the Tokio Marine HCC Group of Companies. HCC International Insurance Company plc is authorised by the Prudential Regulation Authority (PRA) and regulated by the UK Financial Conduct Authority (FCA) and Prudential Regulation Authority. Registered in England and Wales No. 01575839 with registered office at 1 Aldgate, London EC3N 1RE | [tmhcc.com](http://tmhcc.com)

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