

Professional Multi Risk Insurance

PMR RICS 0417

General Conditions

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.

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.

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.

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 business of the **Insured** as stated in the Schedule including the holding of any **Personal appointment** but in respect of Section 1 shall mean only the professional services of the **Insured's** business.

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

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. 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.

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:

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 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).

Excess

is the first amount paid in respect of each claim as stated in the Schedule under Section 1. However, where Exclusion 27 of Section 1 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 under Section 1 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 Section. For the avoidance of doubt, **Indemnity limit** a) is not additional to and shall not increase the sum stated in the Schedule under Section 1.

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.

Insuring Clauses

In consideration of the premium having been paid 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;
- 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 Insured	GBP200;
Any Employee	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 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** 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 Section;

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 Section 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 Section;

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 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 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 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

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.

General Conditions Applicable to Section 1

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:

- as to the correct interpretation of the definition of **Professional business**; or
- regarding the application of General Condition applicable to Section 1, 4 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. Difference in conditions

In the event that there is any conflict between the terms and conditions of this policy and those of the

Approved 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 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 under Section 1.

5. 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 applicable to Section 1, 5 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.

Section 2 – General Liability 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:

Damage

shall mean loss of possession of or damage to tangible property.

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 other than in respect of any actions in the United States of America or Canada and shall include legal expenses:

1. arising out of representation at any Coroner's Inquest or Fatal Accident Inquiry;
2. 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 **Professional business** in respect of matters which may form the subject of indemnity by this Section (including with the **Insurer's** prior consent **Employees**, partners or directors of the **Insured**) provided that:
 - 2.1 the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution;
 - 2.2 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 counsel's opinion is that there is no reasonable defence to the prosecution;
 - 2.3 the **Insurer's** liability 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 legislation in Northern Ireland, the Isle of Man or the Channel Islands;
 - 2.4 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of Part II of the Consumer Protection Act 1987 will be limited to proceedings not consequent upon a deliberate

act or omission 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 Section.

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**.

Injury

shall mean death, bodily injury, illness or disease of or to any person.

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, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.

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.

Indemnity Clauses

1. Section 2A– Employers’ liability

The **Insurer** will indemnify the **Insured** against their liability to pay **Damages** (including claimant’s costs and expenses) and **Defence costs** according to the laws of Great Britain, Northern Ireland, the Isle of Man and the Channel Islands and not to judgments or orders obtained elsewhere nor to judgments or orders obtained in the said courts for the enforcement of foreign judgments whether by way of reciprocal agreements or otherwise.

2. Section 2B, C and D – Public, products and pollution liability

The **Insurer** will indemnify the **Insured** against their liability to pay **Damages** (including claimant’s costs and expenses) and **Defence costs** in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part) unless the **Insured** has requested that there shall be no such limitation and has accepted the terms offered by the **Insurer** in granting such cover which offer and acceptance must be signified by specific endorsement to this Policy.

The indemnity applies only to such liability as defined by each insured Section of Section 2 of this Policy arising out of the **Professional business** subject always to the terms, Conditions and Exclusions of such Section and of the Policy as a whole.

Indemnity Limits

In respect of section 2A

The **Insurer's** liability to pay **Damages** (including claimant’s costs and expenses) and **Defence costs** shall not exceed the sum stated in the Schedule against Section 2A in respect of any one occurrence or series of occurrences arising out of one originating cause.

In respect of sections 2b, C and D

The **Insurer's** liability to pay **Damages** (including claimant’s costs and expenses) shall not exceed the sum stated in the Schedule against each Section in respect of any one occurrence or series of occurrences arising out of one originating cause but under Section 2C and Section 2D the Indemnity Limits represent the **Insurer's** total liability in respect of all occurrences. The Indemnity Limit shall apply in addition to the **Excess**.

Defence costs will be payable in addition to the Indemnity Limits unless this Policy is specifically endorsed to the contrary.

In the event of any one originating cause giving rise to an occurrence or series of occurrences which form the subject of indemnity by more than one Section of Section 2, each Section shall apply separately and be subject to its own separate Indemnity Limit provided always that the total amount of the **Insurer's** liability shall be limited to the greatest Indemnity Limit available under one of the Sections affording indemnity for the occurrence or series of occurrences.

Insuring Clauses

Section 2A – Employers' Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 1 but only for **Injury** to any **Employee** arising out of and in the course of their employment with the **Insured** where such **Injury** is caused during the **Period of insurance**.

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 installations 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.

Section 2B - Public Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring during the **Period of insurance** but not against liability:

1. arising out of or in connection with any **Product**;
2. arising out of **Pollution**;
3. arising out of **Terrorism**.

Section 2C - Products Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring during the **Period of insurance** but only against liability arising out of or in connection with any **Product** and not against liability arising out of **Pollution**.

Section 2D - Pollution Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring in its entirety during the **Period of insurance** and arising out of **Pollution** but only to the extent that the **Insured** can demonstrate that such **Pollution**:

1. was the direct result of a sudden, specific and identifiable event occurring during the **Period of insurance**; and
2. was not the direct result of the **Insured** failing to take reasonable precautions to prevent such **Pollution**.

Conditions Applicable to Sections 2B, C and D

1. Bona Fide Subcontractors Condition

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy 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 the **Insured's** liability at law for **Injury** to any **Employee**;
2. Public/Products Liability insurance in respect of the **Insured's** liability at law for:
 - a. **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 2 (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 condition the term bona fide subcontractors means any independent subcontractor engaged by the **Insured** under a contract for services.

2. Burning welding and cutting conditions

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy 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:

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 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 must 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 the **Insured's** right to be indemnified under Section 2 of this Policy that the following precautions are adhered to on each occasion:

1. Fires to be in a cleared area and at a distance of at least fifteen metres from any property;
2. Fires not to be left unattended at any time;
3. A suitable and fully charged fire extinguisher to be kept available at the scene of the operations for immediate use;
4. Fires to be extinguished at least one hour prior to leaving site at the end of each working day.

Exclusions

Exclusions Applicable to Sections 2A, B, C and D

These Sections do not provide indemnity in respect of liability:

1. arising in connection with:
 - a. any work of demolition except demolition solely undertaken with hand held tools and of structures not exceeding 5 metres in height by **Employees** in the direct service of the **Insured** when such work forms an ancillary part of a contract for construction, alteration or repair carried out by the **Insured**;
 - b. the construction, alteration or repair of bridges, towers, steeples, chimney shafts, blast furnaces, viaducts, mines, dams or transport tunnels;
 - c. pile driving, tunnelling or quarrying;
 - d. the use of explosives for any purpose;
 - e. excavations below 3 metres in depth;
 - f. any work carried out at a height in excess of 15 metre;
 - g. ship repair/ship breaking and/or work on vessels or aircraft;
2. directly or indirectly arising from:
 - a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - b. the radioactive, toxic, explosive or other hazardous 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:
 - i. that of any principal;
 - ii. accepted under agreement and would not have attached in the absence of such agreement;
3. which forms the subject of insurance by any other Policy and this Policy shall not be drawn into contribution with such other insurance;
4. 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.

Exclusions applicable to section 2A – Employers' Liability

1. This Section does not provide any indemnity 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. This Section does not provide indemnity 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.

Exclusions applicable to section 2B – Public Liability

This Section does not provide indemnity in respect of liability:

1. 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:
 - a. 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);
 - b. 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 **Professional business** unless indemnity is provided:
- a. to any **Employee**;
 - b. to third parties;
 - c. to the **Insured** under any other insurance;
 - d. 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;

2. arising out of the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length and then only whilst on inland waterways);
3. for **Damage** to property owned, leased or hired by or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
 - a. premises (or the contents thereof) temporarily occupied by the **Insured** for work therein (but no indemnity is granted for **Damage** to that part of the property on which the **Insured** is working and which arises out of such work);
 - b. **Employees'** and visitors' clothing and personal effects including vehicles and their contents;

- c. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement.

Exclusions applicable to section 2C – Products Liability

This Section does not provide indemnity in respect of liability:

1. for **Damage** to any **Product** or part thereof;
2. for costs incurred in the repair, reconditioning or replacement of any **Product** or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning or replacement;
3. arising out of the recall of any **Product** or part thereof;
4. arising out of any **Product** which with the **Insured's** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft except where specifically stated to be included in the **Professional business**;
5. arising out of **Terrorism**;
6. arising out of any **Product** which is intended for incorporation into any marine equipment upon which the navigation or safety of a waterborne vessel depends except where specifically stated in the **Professional business**;
7. arising out of any **Product** which is intended for use in a motor vehicle except where especially stated to be included in the **Professional business**;
8. 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 **Professional business**.

Exclusions applicable to section 2D – Pollution Liability

This Section is subject to the Exclusions to Sections 2B and 2C and also does not provide indemnity in respect of liability:

1. for **Damage** to premises presently or at any time previously owned or tenanted by the **Insured**;
2. for **Damage** to 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.

Exclusions applicable to sections 2B, C and D – Public, Products and Pollution Liability

These Sections do not provide indemnity in respect of liability:

1. for **Injury** to any **Employee**;
2. arising out of the deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**;
3. arising out of liquidated damages clauses, penalty clauses or performance warranties until proven that

liability would have attached in the absence of such clauses or warranties;

4. arising from exposure or alleged exposure to asbestos or materials or products containing asbestos;
5. for an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under the Policy;
6. arising out of or in connection with the design, sale or supply of computer software (which shall not include the media or its packaging on which such software is stored);
7. arising out of or in connection with advice, design, specification, formula or other breach of professional duty by the **Insured**;
8. for loss, damage, deterioration of or corruption (whether permanent or temporary) to computer programs or electronic data including consequential or pure financial loss;
9. 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.

Extensions to Section 2

1. 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.

2. 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 **Professional 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 3. to Sections 2B, C and D;
- b. officials of the **Insured** in their business capacity arising out of the performance of the **Professional 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**.

3. Cross liabilities

Each person or party specified as the **Insured** in the Schedule is separately indemnified in respect of claims made against any of them by any other subject to **Insurer's** total liability not exceeding the stated Indemnity Limits.

4. Unsatisfied court judgments (applicable only to section 2A)

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 **Injury** sustained by the **Employee** arising out of and in the course of their employment by the **Insured** in the **Professional 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.

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 these sections 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** of the **Insured**: GBP100.

Notification and Claims Conditions Applicable to Section 2

Conditions 1,2, 3 and 4 below are conditions precedent to the **Insured's** right to be indemnified under Section 2 of this Policy.

1. The **Insured** shall give written notice to the **Insurer** as soon as reasonably practicable of any occurrence 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.

2. No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer** who shall be entitled to take over and 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.
3. The **Insured** shall give notice, as soon as reasonably practicable, of any fact or event which materially affects the risks insured by this Policy.
4. Where the premium is provisionally based on the **Insured's** estimates the **Insured** shall keep accurate records and after expiry of the **Period of insurance** declare as soon as possible such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid by or allowed to the **Insured** as the case may be subject to any minimum premium that may apply. Where such estimates include remuneration to **Employees** the required declaration shall also include remuneration to persons engaged by the **Insured** to perform a contract constituting the provision of labour only.
5. 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.

6. Except where the Indemnity Limit is inclusive of **Defence costs** if a payment exceeding the Indemnity Limit 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 Indemnity Limit bears to the amount paid to dispose of a claim.

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