

Professional Risks Insurance

PI ICA Accountants Civil AOC 1123

Policy Wording

Accountants Professional Indemnity Insurance

Definitions applicable to this Professional Indemnity Section

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

Alternate

means any individual practitioner, partnership, limited liability partnership or company who is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.

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 Professional Indemnity 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 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 or loss as stated in the Schedule provided always that the maximum amount payable by the **Insured** during the **Period of insurance** shall not exceed the maximum amount calculated in accordance with the relevant provisions of the Professional Indemnity Insurance Regulations of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable in force at the date of inception or renewal of this Professional Indemnity Section. The **Excess** is not payable in respect of **Defence costs and expenses**. The **Indemnity limit** is additional to the **Excess**.

Extended Policy Period

means the period starting from the day immediately following the expiration of the original **Period of insurance** and ending with the earliest to occur of:

- a. the date that the **Insured** obtains a replacement insurance policy that complies with the provisions of the Professional Indemnity Insurance regulations of the relevant Institute; being the Institute of Chartered Accountants in England and Wales the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland; or
- b. 30 days from receipt by the relevant Institute of written notice from the **Insurer** of the commencement of the **Extended Policy Period**.

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**, losses and claimant's costs, and shall not exceed the sum(s) stated in the Schedule in respect of any one claim or loss or series of claims or losses arising out of one originating cause regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this Professional Indemnity Section.

Insured

is any person or firm stated in the Schedule and includes:

- a. any current or previous partner, director, principal, **Member** or **Employee** of any firm or company stated in the schedule; and
- b. any other person who becomes a partner, director, principal, **Member** or **Employee** of the firm;
- c. any person who has been under a contract of service with a **Member** save that such person shall only be an **Insured** for the purpose of this Professional Indemnity Section if and insofar as any claim or claims arise out of the **Professional business** carried on by such person for or on behalf of the **Insured** named in the schedule;
- d. the estates and/or legal representatives of any of those listed in sub-paragraphs (a), (b) or (c) above in the event of death, incapacity, insolvency or bankruptcy;
- e. any predecessor in business of the firm or company stated in the Schedule;
- f. any **Alternate**.

Insurer

means HCC International Insurance Company PLC.

Jurisdiction

means the jurisdiction stated in the Schedule against this Professional Indemnity Section. 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.

Member

means any member of a limited liability partnership including a designated member save that such a **Member** shall only be an **Insured** if and insofar as any claim or claims arise out

of the **Professional business** carried on by the **Member** for or on behalf of the **Insured**.

Ombudsman

means any ombudsman to whose jurisdiction the **Insured** is subject by virtue of contract or law.

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** including, but only in relation to the performance of **Services**, any appointment as a director or officer of a company.

Professional business

is the business of the **Insured** as stated in the Schedule including the holding of any **Personal appointment** and authorised work as defined under the Probate Regulations of the Institute of Chartered Accountants in England and Wales and insurance mediation work as defined in the Designated Professional Body Handbook of the Institute of Chartered Accountants in

England and Wales/of Scotland/in Ireland as applicable.

Services

shall mean, whilst holding the appointment of company secretary, registrar or director, all services performed or advice given by the **Insured** in connection with tax matters, secretarial work, share registration, financial advice to management, book-keeping, management accounting, financial investigation and reports, financial claims - their negotiation and settlement, company formations, investment advice, insurance and pension scheme advice and computer consultancy.

Interpretation applicable to this Professional Indemnity Section

If the **Insured** firm is regulated by the Association of Chartered Certified Accountants then any references to the Institute of Chartered Accountants shall be read as being a reference to the Association of Chartered Certified Accountants instead.

Insuring clauses applicable to this Professional Indemnity Section

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

1. Indemnity

Up to the **Indemnity limit** for claims first made against the **Insured** during the **Period of insurance** arising out of the ordinary course of the **Professional business** including claimant's costs in respect of:

- a. civil liability to pay **Damages**;
- b. the loss of or damage to **Documents**;
- c.
 - i. any amount paid and/or payable; and/or
 - ii. the cost of taking any steps which the **Insured** is directed to take in relation to a claimant

in accordance with any final and binding award or determination of any **Ombudsman**. Nothing in this clause limits or restricts (or shall be construed as limiting or restricting) the scope of indemnity afforded by Insuring Clause 1 (a).

PROVIDED THAT if the **Insured** should suffer any loss or incur any liability of the type insured under this Professional Indemnity Section by reason of the dishonest or fraudulent act or omission of any former or present partner, director, **Member**, **Employee**, consultant, sub-contractor or **Alternate** of the **Insured**, no indemnity shall be afforded hereunder in respect of such loss or liability to any person committing or condoning such dishonest or fraudulent act or omission and the sums payable hereunder shall be only for the balance of liability in excess of the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives.

2. Legal defence costs and expenses

The **Insurer** will pay in addition to any indemnity under Insuring Clauses 1(a), (b) and (c), 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.

Exclusions Applicable to this Professional Indemnity Section

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

1. Employers liability

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

2. Bodily injury/property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property (except where cover is provided under Insuring Clause 1(b)) unless such claim arises directly from actual or alleged 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 committed by any person after discovery of reasonable cause for suspicion of fraud or dishonesty on the part of that person;

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;

6. Products

arising out of or relating to goods or products sold, supplied, repaired, altered, manufactured, installed or maintained by the **Insured** or any related company, sub-contractor or other person acting on behalf of the **Insured**. The term "goods or products" shall include Packaged Software (meaning computer software produced by a third party and marketed for general distribution) but shall not apply to any other computer software or to any adaptation or amendment to Packaged Software;

7. Insolvency/bankruptcy of Insured

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

8. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind unless such claim emanates from actual or alleged breach of professional duty by the **Insured**;

9. Claims or Circumstances previously notified

arising out of any claim or **Circumstance** or occurrence which has been notified under any other policy or certificate of insurance applying prior to the inception of this Policy;

10. Other insurance

in respect of which the **Insured** is, or but for the existence of this Professional Indemnity Section 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 Professional Indemnity Section provided that this clause shall not operate to exclude or limit the scope of indemnity provided by Insuring Clause 1 c);

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 Professional Indemnity 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 Professional Indemnity Section;

18. War

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

19. Terrorism

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

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

20. Asbestos

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

21. 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) provided that this exclusion shall not apply to any claims made against the **Insured** for negligence in the normal course of their conduct of any receivership or procedures under the Insolvency Act 1986;
- 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**;

22. Patents

Notwithstanding Insuring Clause 1, arising directly or indirectly from the infringement of any patent;

23. Insured against insured

made by any person comprising the **Insured** against any other person comprising the **Insured** save for any claim made for reimbursement pursuant to General Condition 3 to this Professional Indemnity Section;

24. Directors and officers

made against any **Insured** in the capacity of director, company secretary or registrar of any company save in respect of performance (or non-performance) of **Services**;

25. Claims by insurance companies

made against the **Insured** by any underwriter or insurance company arising out of the **Insured's** activities as their insurance agent unless the underwriter or insurance company has obtained a judgement in any court against the **Insured** notwithstanding anything to the contrary in Notification and Claims Conditions 1 and 2 to this Professional Indemnity Section;

26. Investment warranties

arising out of the giving of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments;

27. Obscenity

arising directly or indirectly from any obscenity, blasphemy or pornographic material;

28. Libel, slander or defamation

for libel, slander or defamation arising directly or indirectly from statements made or published by the **Insured** unless the **Insured** can demonstrate that it neither knew nor ought reasonably to have known that

the statement was defamatory at the time that it was published;

29. Restricted recovery rights

where the **Insured's** right of recovery from any third party in respect of that claim has been restricted by the terms of any contract entered into by the **Insured**;

30. Contractual remedies

for any award of, or liability to pay, compensation or **Damages** where the **Insured** has assumed an obligation to pay compensation or **Damages** in excess of any amount that would otherwise be awarded under statute or common law;

31. Financial advice

arising directly or indirectly from the provision by the **Insured** of any investment or financial advice or arrangements made by or on behalf of the **Insured** in respect of any finance, credit or leasing agreement;

32. Employee benefit schemes / stocks and shares

arising directly or indirectly from the operation or administration of any pension or other employee benefit scheme or trust fund, or the sale or purchase or dealing in any stocks, shares or securities or the misuse of any information relating to them or the breach of any related legislation or regulation;

33. Competition, restraint of trade or anti-trust legislation or regulation

arising directly or indirectly from the breach of any competition, restraint of trade or anti-trust legislation or regulation;

34. Official action or investigation

arising from any official action or investigation by or decision or order of any public, local or government body or authority;

35. Loss, damage or destruction of bearer bonds or coupons

arising from the loss, damage or destruction of any bearer bonds, coupons, bank or currency notes, share certificates, stamps or other negotiable paper;

36. Deliberate acts

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

37. Utility provider

arising out of the failure of the service provided by an internet service provider, any telecommunications provider or other utility provider.

38. Costs and expenses incurred without prior consent

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

39. Claims by Employees

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

Notification And Claims Conditions Applicable to this Professional Indemnity Section

1. Claim/circumstance notification

1.1 The **Insured** shall inform the **Insurer**, in writing, as soon as reasonably practicable and in any event not later than 7 days after the end of 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.

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 piclaims@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
The St Botolph Building, 138-139 Houndsditch,
London, EC3A 7BT

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 King's 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

Special Notification Conditions Applicable to this Professional Indemnity Section

1. Non Avoidance and Prejudice

- 1.1 The Insurer will not:
 - a. avoid this Professional Indemnity Section;
 - b. claim to be discharged from any or all liability to provide any indemnity (in whole or in part) under this Professional Indemnity Section; or
 - c. (subject to Special Conditions 1.3 and 2.1 below) seek to reduce the indemnity due under this Professional Indemnity Section

on the grounds of a breach of the duty of fair presentation of the risk to the **Insurer**, provided always that such breach was free of any fraudulent conduct or intent to deceive. It shall be for the **Insurer** to establish that such breach resulted from any fraudulent conduct or intent to deceive.

- 1.2 Nothing in this Professional Indemnity Section shall be construed as a warranty.
- 1.3 In the event that any circumstance is notified to the **Insurer** and the **Insured** had knowledge prior to the **Period of insurance** of such **Circumstance** and the **Insured** should have notified it under any previous policy (whether with other insurers or not) the **Insurer** shall not seek to exclude any claim arising out of such **Circumstance** but the indemnity hereunder shall be limited to the indemnity which would have been available under the earliest such previous policy if such circumstance had been properly notified.

2. Non-Compliance

Where the **Insured's** breach of or non-compliance with any condition of this Professional Indemnity Section has resulted in prejudice to the **Insurer**:

- a. in the handling or settlement of any claim against the **Insured**; or
- b. in the obtaining of reimbursement from any dishonest or fraudulent person as referred to in General Condition 3 of this Professional Indemnity Section,

the indemnity afforded hereunder (including liability for claimants' costs) shall be reduced to such sum as in the **Insurer's** reasonable opinion would have been payable by them in the absence of such prejudice.

3. Extended Policy Period

- 3.1 The **Period of insurance**, in respect of this Professional Indemnity Section, shall be extended by the **Extended Policy Period** where the **Insured** has not, prior to the expiration of the original **Period of insurance**, obtained insurance complying with the provisions of the Professional Indemnity Insurance regulations of the relevant Institute, being the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, incepting on and with effect from the day immediately following the expiration of the original **Period of insurance**. This special condition shall not apply to policies of insurance issued by the Assigned Risks Pool.

General Conditions Applicable to this Professional Indemnity Section

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.

The choice of law governing this Policy and of tribunal to determine any dispute shall be determined by reference to the location of the **Insured**. In the event that the **Insured** has offices in more than one jurisdiction then the choice of law and tribunal shall be determined by reference to the office most closely connected with the claim giving rise to any dispute. Accordingly English/Scottish/Irish Law (as may be appropriate) governs this Professional Indemnity Section. In the event of any dispute arising between the **Insured** and the **Insurer** concerning this Professional Indemnity Section, subject to General Condition 9 below, the parties submit to the courts of England and Wales/Scotland/Ireland (as may be appropriate) who shall have exclusive jurisdiction to determine any such dispute

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.

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 partner, principal, director, **Employee** or **Alternate** of the **Insured**, the **Insured** shall, at the expense of the **Insurer**, take all reasonable action (including legal proceedings) to obtain reimbursement from such person concerned (and from any other person who may have conspired to commit or have condoned such act) or from the estate or legal representatives of such person(s). Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such person(s) from the **Insured** or any monies held by the **Insured** for such person(s) shall be deducted from any amount payable under this Professional Indemnity Section

4. Fraudulent claims

If the **Insured** shall make a claim for indemnity under this Professional Indemnity Section knowing the same to be false or fraudulent as regards amount or otherwise, then, in respect of that **Insured** only:

- a. The **Insurer** shall not be liable to pay the claim;
- b. The **Insurer** may recover from the **Insured** making the false or fraudulent claim any sums paid by the **Insurer** in respect of the claim; and

- c. The **Insurer** may by notice to the **Insured** treat this Professional Indemnity Section as having been terminated in respect of the **Insured** making the false or fraudulent claim with effect from the time of the fraudulent act.

If the **Insurer** does treat this Professional Indemnity Section as having been terminated in respect of the **Insured** making the false or fraudulent claim:

- a. The **Insurer** may refuse all liability to such **Insured** under this Professional Indemnity Section in respect of any claim or **Circumstance** notified after the time of the fraudulent act; and
- b. The **Insurer** need not return any of the premiums paid under this Professional Indemnity Section in respect of the cover for the **Insured** making the false or fraudulent claim.

Treating this Professional Indemnity Section as having been terminated under this clause in respect of an **Insured** making a false or fraudulent claim does not affect the rights and obligations of the parties to this Professional Indemnity Section with respect to a claim or **Circumstance** notified before the time of the fraudulent act.

This Professional Indemnity Section shall continue in full force and effect for the benefit of all other **Insureds** as if such false or fraudulent claim had not been made.

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 Professional Indemnity Section but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

6. Cancellation

Subject to General Condition 4 this Professional Indemnity Section may not be cancelled unless the **Insured** and **Insurer** agree mutually in writing to cancel this Professional Indemnity Section.

In the event of such agreement, the **Insurer** shall within 7 days of the date upon which such agreement in writing is reached, write to:

- a. the **Insured** at the address shown in the Schedule notifying the **Insured** that this Professional Indemnity Section will be cancelled with effect from a date not less than 30 days after the date of such agreement;
- b. the relevant Institute, being the Institute of Chartered Accountants in England and Wales the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, notifying it of the agreement, the effective date of cancellation and the name of 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 The St Botolph Building, 138-139 Houndsditch, London, EC3A 7BT.

9. Arbitration

Save as provided in Notification and Claims Condition 3.1, any dispute or disagreement between the **Insured** and the **Insurer** arising out of or in connection with this Professional Indemnity Section shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by the **Insured** and the **Insurer** or failing agreement to be appointed by the President of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable) whose decision shall be final and binding on both parties.

Furthermore, in the event of any dispute between any insurers concerning this insurance, such dispute shall be referred to arbitration before a sole arbitrator, to be mutually agreed upon or, failing agreement, to be appointed by the President for the time being of the Institute of Chartered Accountants (in England and Wales/of Scotland/in Ireland as applicable) whose decision shall be binding on both parties.

10. 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.

11. Institution compensation fund

If the **Insured's** relevant governing professional body (the "Institute") becomes subrogated to the **Insured's**

rights under this Professional Indemnity Section arising from its making a payment to a third party from the Institute's Compensation Fund, the Institute shall be deemed hereby to rank as a preferential creditor and its claim shall have priority over any other party who may also become subrogated to the **Insured's** rights hereunder.

12. Reasonable steps to avoid loss

Without prejudice to the Notification and Claims Conditions in this Professional Indemnity Section, 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 Professional Indemnity Section.

13. 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.

14. Assignment

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

15. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of this Professional Indemnity Section of the policy of insurance, to be confirmed by way of a written endorsement to this Professional Indemnity Section. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 15 – Change of

control, the cover provided by this Professional Indemnity Section of the policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this Professional Indemnity Section of the policy of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 15 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 15.

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
The St Botolph Building,
138-139 Houndsditch,
London, EC3A 7BT*

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

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

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

We may disclose your personal information to:

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

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

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

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

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

Contact us

Tel: +44 (0)20 7702 4700
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 The St Botolph Building, 138 Houndsditch, London, EC3A 7BT | tmhcc.com