

Professional Risks Insurance

PI I-Tech Civil AOC 1123

Policy Wording

Information Technology 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:

Breach of contract

means breach of a written contract to design, produce or supply **IT services or Deliverables**

Circumstance

means 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** under this Professional Indemnity Section.

Claim

a written demand for financial compensation from the **Insured** in consequence of an alleged breach of contract or breach of professional duty on the part of the **Insured** which gives rise to a third party loss.

Compensatory damages

means compensatory awards or settlements.

Computer system

means 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).

Defence costs and expenses

means all costs and expenses incurred, with the prior consent of the **Insurer**, in the investigation, defence and settlement of any **Claim** or any **Circumstance** first notified during the **Period of insurance**. It does not include the **Insured's** own costs and expenses.

Deliverables

shall mean any hardware, firmware, peripherals, software, cabling or electronic equipment.

Documents

means 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

means:

- any person employed by the **Insured** under a contract of service, training or apprenticeship; and
- any voluntary worker; and
- any locum, seasonal or temporary personnel; and
- any self-employed person or entity acting as a freelance consultant

but only if such person or entity is working under the **Insured's** direction, control and supervision.

Excess

means the first amount as specified in the **Schedule** payable by the **Insured** in respect of each and every **Claim** after the application of all terms and conditions of this Professional Indemnity Section. The **Indemnity limit** is additional to the **Excess**. The **Excess** is not applicable to **Defence costs and expenses** (unless expressly stated otherwise in the **Schedule**).

Financially associated person or entity

shall mean:

- any business controlled or managed by the **Insured** or in which the Insured has an executive interest;
- any company in which the Insured directly or indirectly owns or controls more than 15% of the issued share capital;
- any person having an executive or managerial role in the Insured or who would be considered to be a shadow director of the Insured;
- 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

means the **Insurer's** total liability to pay **Compensatory damages**, claimant's costs, fees and expenses and shall not exceed:

- a. with regard to Insuring clause 2, for **Claims** arising directly or indirectly from any dishonest, fraudulent or malicious acts or omissions of any former or present **Employees** or sub-contractors the sum stated in the **Schedule** inclusive of **Defence costs and expenses** in respect of any one **Claim** and in total for all **Claims** first made during the **Period of insurance**;
- b. in all other cases (except where specific sums are stated in the Insuring Clauses of this Professional Indemnity Section) the sum(s) stated in the **Schedule** in respect of any one **Claim**.

If more than one person is entitled to an indemnity under the terms of this Professional Indemnity Section then the **Insurer's** total liability to all such persons shall not exceed the **Indemnity limit**. For the avoidance of doubt, **Insurer's** total liability to indemnify the **Insured** under the Insuring Clauses and Extensions shall not exceed the sum stated in the **Schedule**.

Insured

means any person or firm stated in the **Schedule** and includes:

- a. the current or previous partners, directors, principals, members or **Employees** of any firm or company stated in the **Schedule**;
- b. any other person who becomes a partner, director, principal, member or **Employee** of any firm or company stated in the **Schedule**;
- c. entity that becomes an additional **Insured** under the terms of Extension 3 – Mergers and Acquisitions.

Insurer

means HCC International Insurance Company PLC.

IT services

means any services provided in the ordinary course of the **Insured's** business including but not limited to data processing, data warehousing, domain name registration, the provision of outsourced services, systems analysis and design, telecommunications and data services, maintenance, website design, web hosting services.

Jurisdiction

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

Liquidated damages

means a sum of money or formula used to determine a genuine pre-estimate of loss and damage attributable to a specified **Breach of contract** (above any **Excess** stated in the **Schedule**) on the part of the **Insured**, provided that at the time the sum or formula was created and agreed between the parties to the contract as being representative of a fair, reasonable and justifiable reflection of the loss

occasioned by the breach. Such sum of money or formula cannot be above any amount that would be recoverable had the **Claim** been made and determined as a common law **Claim** for **Breach of contract**.

Multimedia activities

means publishing, broadcasting, communications or any other dissemination of data, text, sounds, images or similar content, acts committed in the process of researching, investigating, gathering, acquiring, obtaining, preparing, compiling, or producing data, text, sounds, images or similar content, or the licensing, syndication, serialisation, distribution, sale or lease of data, text, sounds, images or similar content .

Notification costs

means the reasonable and necessary costs incurred by the **Insured** to draft, send and administer notification communications to those whose data the **Insured** can show has been stolen or misplaced.

Period of insurance

means that as stated in the **Schedule**.

Professional business

is the professional services of the **Insured's** business as stated in the **Schedule** including **Multimedia activities**.

Schedule

means the document titled **Schedule** that includes the name of the **Insured**, the premium and other variables to this Policy (including endorsement clauses) and is incorporated in this Policy. **Schedules** may be reissued from time to time and each successor overrides the earlier **Schedule**.

Virus

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

Insuring clauses 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 any **Claim** first made against the **Insured** during the **Period of insurance** for which the **Insured** is allegedly liable to pay **Compensatory damages** (including claimant's costs and expenses) and arising out of the ordinary course of

the **Professional business** within the geographical limits stated within the **Schedule**, in consequence of:

- a. **Breach of contract** to design or supply **Deliverables** or provide **IT services** including indemnity for **Liquidated damages**;
- b. Breach of professional duty, negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation;
- c. The failure to protect against unauthorised access to, unauthorised use of, or a denial of service attack against the **Insured's Computer system**;
- d. Transmission of a **Virus**;
- e. Defamation or other tort related to disparagement of character, reputation or feelings of any person or organisation including libel, slander, product disparagement and malicious falsehood;
- f. Breach of confidentiality or other invasion, misuse of private information, infringement or interference with rights of privacy or publicity including false light and the public disclosure of private facts including misuse of any information which is either confidential or subject to statutory restrictions;
- g. Infringement of intellectual property rights including copyright, title, slogan, trademark, trade name, trade secret, domain name or metatag, moral rights, misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork, passing off and plagiarism and commercial appropriation of name or likeness;
- h. The misplacement of or damage to **Documents**;
- i. Any other civil liability not otherwise excluded.

2. Dishonesty

Up to the **Indemnity limit** for any **Claim** first made against the **Insured** during the **Period of insurance** for which the **Insured** is allegedly liable to pay **Compensatory damages** (including claimant's costs and expenses) and arising out of the ordinary course of the **Professional business** within the geographical limits stated within the **Schedule**, as a consequence of dishonest, fraudulent or malicious act or omission of any former or present **Employee**. (which for the avoidance of doubt for the purpose of this insuring clause does not include any principal, partner, member or director of the **Insured**).

3. Data protection defence costs

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, in respect of legal costs and expenses incurred with the **Insurer's** prior written consent in the defence of any criminal proceedings brought 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 **Insured's 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 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.

4. Reputation management

Following a **Claim** under Insuring Clauses 1 or 2 for all reasonable costs incurred with the **Insurers** prior written consent (not to be reasonably withheld) for a public relations and/or crisis management consultant to avert or mitigate any material damage to the **Insured's** business reputation.

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 claims first made by the **Insured** during the **Period of insurance** for reasonable and necessary costs and expenses incurred with the **Insurer's** prior consent in prosecuting any claim for infringement of intellectual property rights first discovered 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. Irrecoverable fees

Up to the **Indemnity limit** for amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a claim for more than the amount owed, and which would otherwise be covered under Insuring Clause 1, provided that such threat is first made and notified to **Insurers** during the **Period of insurance**. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the

amount owed if they consider that it will avoid a legitimate claim under Insuring Clause 1 for a greater amount. If, following this, a claim under Insuring Clause 1 still arises then the amount paid under this section will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers part or all of the debt then such recovered amount shall be repaid to the **Insurer** less the **Insured's** reasonable expenses of recovering the debt due.

7. 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 Professional Indemnity Section. For the avoidance of doubt Costs for Representation cover does not apply to Insuring Clause 5.

Extensions Applicable to this Professional Indemnity Section

In respect of indemnity provided under Insuring Clause 1 and subject otherwise to this Professional Indemnity Section terms and conditions the following extensions of cover apply:

1. Joint ventures

The **Insured** is indemnified up to the **Indemnity limit** for any **Claim** or **Circumstance** arising from the **Professional business** carried out by or in the name of any joint venture or any other profit-sharing arrangement but only in respect of the acts or omissions of the **Insured**;

2. Indemnity to principals

If the **Insured** so requests, the **Insurer** will indemnify any Principal with whom the **Insured** has entered into an agreement as far as is necessary to meet the requirements of such agreement but only in respect of liability incurred to independent third parties arising directly from the **Professional business** services performed by the **Insured** and subject always to the terms and conditions of this Professional Indemnity Section;

3. Mergers and acquisitions

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

- a. purchases assets or acquires liabilities from another entity in an amount no greater than 10% of the assets of the **Insured** as listed in its most recent financial statement; or

- b. acquires another entity whose annual revenues are no more than 10% of the annual revenues of the **Insured** for their last completed financial year; and
- c. there is no material deviation to the **Insured's Professional business**; and
- d. prior to the acquisition of the acquired company not being aware of any professional indemnity claims or circumstances that could give rise to a claim;

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

4. Sub-contractors

Where the **Insured** has engaged a third party under a written contract to provide **IT Services** under the **Insured's** supervision, the **Insurer** will indemnify the **Insured** for any **Claim** brought as a result of the subcontractors work undertaken on the **Insured's** behalf to the extent that the **Insured** has not waived or otherwise impaired any rights of recourse against said sub-contractors;

5. Notification costs

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance** with the **Insurer's** prior consent;

6. 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**: GBP 100;

7. 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.

For the avoidance of doubt the indemnity provided under Insuring Clauses 3), 5) and 7) and Extensions 5) and 6) is not additional to and shall not increase the **Indemnity limit**.

Exclusions Applicable to this Professional Indemnity Section

The **Insurer** shall not be liable to indemnify the **Insured** against any **Claim** or direct financial loss suffered by the **Insured**:

1. 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;

2. Bodily injury/property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such **Claim** arises directly from any designs, plans, specification, formulae, directions or advice provided in any **IT services** or **Deliverables**;

3. 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 Professional Indemnity Section, whether notified under any other insurance or not;

4. Commercial disputes

arising from any commercial dispute between the **Insured** and their business partners or business associates, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venture partner, but only to the extent such a **Claim** is based upon:

- a. commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with you, or any compensation or remuneration promised or owed by you pursuant to those terms; or
- b. The **Insured's** decision to cease doing business with such a partner or associate;

5. Costs and expenses incurred without prior consent

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

6. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach, act, omission, or infringement committed, condoned or ignored by the **Insured** (unless covered under Insuring Clause 2). For the avoidance of doubt no indemnity shall be given under Insuring Clause 2 in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;

7. 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;

8. Financial advice

arising directly or indirectly from any investment, the provision of any finance or other financial advice;

9. Fines and penalties

for penalties, fines, multiple, exemplary, or other non-compensatory damages awarded other than in actions brought for libel, slander or defamation as far as they are covered by this Professional Indemnity Section;

10. Gaming, gambling or lotteries

arising directly or indirectly from the use or provision of any gaming, gambling or lotteries unless a **Claim** arises directly from **IT Services**;

11. Insolvency/bankruptcy of Insured

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

12. Legal action

in respect of an action for **Compensatory 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. 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;

14. Obscenity

arising from any obscenity, blasphemy or pornographic material;

15. Other appointments

made against any **Insured** in the 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;

16. Patents

notwithstanding Insuring Clause 1g), arising directly or indirectly from the infringement of any patent;

17. Radioactive contamination or explosive nuclear assemblies

directly or indirectly related to, 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;

18. Recall costs

arising from the costs and expenses incurred in the recall, repair, and replacement of any **Deliverables** or the refund of any money paid to a third party in connection with the recall of any **Deliverables**;

19. 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**;

20. 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;

21. Takeover or merger

arising directly or indirectly by reason of acts, errors or omissions committed by the **Insured** after the date of its merger with or acquisition by another entity unless otherwise agreed by the **Insurer**;

22. Third party defect

arising directly or indirectly from any defect in any **Deliverable** supplied by a third party. However, this exclusion does not apply to any amount you satisfy us that you are legally able to recover under a written contract;

23. 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**;

24. Utility provider

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

25. Virus

arising directly or indirectly from any **Virus** provided that this exclusion shall not apply in respect of any **Claim** made by an independent third party as a result of the unintentional transmission of a **Virus**;

26. War and Terrorism

arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign or terrorist enemies (including but not limited to political and religious), 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.

Matters Insurable Elsewhere Applicable to this Professional Indemnity Section

27. 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;

28. 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;

29. Land, buildings, aircraft, watercraft or vehicles

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;

30. 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.

31. 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

As conditions precedent to their right to be indemnified under this Professional Indemnity Section the **Insured**:

- 1.1 shall inform the **Insurer** 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 of 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 Professional Indemnity Section with the **Insurer**, within 7 days after its expiry.

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

- 1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability, 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** or relating to the recovery or subrogation process of any settled **Claim**;
- 1.4 shall not destroy evidence, supporting information or documentation without the **Insurer's** prior consent; nor destroy any **Deliverables** or other property relating to a **Claim** under this Professional Indemnity Section.

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 Professional Indemnity Section 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;
- 3.3 the **Insured** shall pay the relevant **Excess** and **Insurers** shall only make a payment after the applicable **Excess** has been fully paid other than in relation to a payment being made under 3.2 above.

4. Multiple Claims from a single source

All **Claims** and **Circumstances** which arise from the same original cause or event, a single source or a repeated or continuing problem in your work will be treated as a single **Claim** or **Circumstance** regardless of the number of persons claiming Indemnity. This includes such **Claims** and **Circumstances** arising after, as well as during, the **Period of insurance**.

General Conditions Applicable to this Professional Indemnity Section

1. Cancellation

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

2. 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 Professional Indemnity Section.

3. 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 Professional Indemnity 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.

4. 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.

5. 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.

6. Other parties

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights to enforce any term of this Policy.

7. 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 Professional Indemnity Section 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 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.

8. Reasonable steps to avoid Loss

Without prejudice to the Notification and **Claim** Conditions in this Professional Indemnity Section, the

Insured shall take all reasonable steps before entering into a contract for **IT Services** or **Deliverables** to:

- a. avoid or mitigate any consequential or pure economic loss;
- b. to ensure that it could provide the required level and quantity of **IT Services** and **Deliverables** using the resources available to the **Insured**, and capable of performing the contract in accordance with the terms and conditions;
- c. not restrict recovery rights with any third party with whom a contract is entered;
- d. will adhere to any legal advice received.

The **Insured** shall protect its **Computer system** by:

- a. having **Virus** protection software operating in place which is running, correctly configured and regularly or automatically updated;
- b. having a fire wall or similar configured device to control access to its **Computer system**;
- c. encrypting and controlling the access to its **Computer system** and external devices including plug-in devices networked to its **Computer system**;
- d. controlling unauthorised access to its **Computer system** by correctly configuring its wireless network;
- e. changing all passwords on information and communication assets at least every 60 days and cancel any username, password or other security protection after the **insured** knew or had reasonable grounds to suspect that it had been available to any unauthorised person;
- f. taking regular back-up copies of any data, file or programme on its **Computer system**;
- g. having an operational system for logging and monitoring user activity on its **Computer system**.

9. Subscribing Insurers

The **Insurers** obligations under this Professional Indemnity Section are several and not joint and are limited solely to the extent of their individual subscriptions. The **Insurers** are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

10. 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.

11. 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.

12. Assignment

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

13. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of the Professional Indemnity Section of insurance, to be confirmed by way of a written endorsement to the Professional Indemnity Section. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 13 – Change of control, the cover provided by this Professional Indemnity Section 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 where notification of the claim occurs after a change in control (as referred to in this General Condition 13 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 13.

Complaints

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

*Compliance Officer
Tokio Marine HCC
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

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