

# companion

## ICA Accountants

Professional Multi Risk Insurance  
PMR ICA AOC 0417



Arranged by  
Moorhouse Group Limited  
Barclay House  
2 - 3 Sir Alfred Owen Way  
Caerphilly CF83 3HU

# General Definitions

*Titles and Headings in this Policy are descriptive only and are used solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.*

*Any words or expressions in the Policy which have a specific meaning appear in bold print and have the same meaning whenever they appear in the Policy (whether expressed in the singular or in the plural, male, female or neutral) unless expressly stated otherwise.*

## Employee

is:

- a. any person employed by the **Insured** under a contract of service, training or apprenticeship; and
- b. any voluntary worker; and
- c. any locum, seasonal or temporary personnel; and
- d. any self employed person, who is not an independent contractor; and
- e. any person supplied or remunerated through a contract hire company or agency, who is not an independent contractor but is employed by the contract hire company on a supply only basis, working as a member of the **Insured's** staff;

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

## Insured

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

- 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 Policy 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.

## 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.

# General Conditions

## 1. Policy construction and disputes

Any phrase or word in this Policy and the Schedule will be interpreted in accordance with the laws of England and Wales. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

Any dispute concerning the interpretation of the terms, Conditions or Exclusions contained herein is understood and agreed by both the **Insured** and the **Insurer** to be subject to the laws of England and Wales. Each party agrees to refer any such dispute to a mediator to be agreed between the **Insured** and the **Insurer** within 14 working days of any dispute arising under the Policy. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.

The **Insured** and the **Insurer** agree to perform their respective continuing obligations under this Policy while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations. If any such dispute is not resolved by mediation or the **Insured** and the **Insurer** cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be submitted to the exclusive jurisdiction of any court of competent jurisdiction within England and Wales and each party agrees to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

## 2. Fraudulent claims

If the **Insured** shall make a claim for indemnity under this policy 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 the policy 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 the policy 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 the policy 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 the policy in respect of the cover for the **Insured** making the false or fraudulent claim.

Treating the policy 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 the policy with respect to a claim or **Circumstance** notified before the time of the fraudulent act.

The policy 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.

## 3. Contracts (Rights of Third Parties) Act 1999

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 4. Cancellation

Subject to General Condition 2 this Policy may not be cancelled unless the **Insured** and **Insurer** agree mutually in writing to cancel the Policy

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 the Policy 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**.

## 5. Invalidity

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

## 6. Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

- a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker;
- b. in the case of the **Insurer**, to HCC International Insurance Company PLC at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

## 7. Reasonable steps to avoid loss

Without prejudice to the Notification and Claims Conditions in this Policy, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any claim or **Circumstance** notifiable under this Policy.

## 8. Premium payment clause

If the premium due under this Policy has not been so paid to **Insurers** by the 60th day from the inception of this Policy, (and, in respect of instalment premiums, by the date they are due), **Insurers** shall have the right to cancel this Policy by notifying the **Insured** via their broker in writing. In the event of cancellation, premium is due to **Insurers** on a pro rata basis for the period that **Insurers** are on risk but the full policy premium shall be payable to **Insurers** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this Policy.

It is agreed that **Insurers** shall give not less than 15 days prior notice of cancellation to the **Insured** via their broker. If premium due is paid in full to **Insurers** before the notice period expires, notice of cancellation shall automatically be revoked. If not, this Policy shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

## 9. International sanctions

The **Insurer** will not provide cover, be liable to pay any claim or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations which are applicable to it.

## 10. Assignment

This 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**

## 11. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the insured shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion

agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 11 – Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this policy of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 11 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 11.

## 12. Complaints

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

*Compliance Officer*

*Tokio Marine HCC*

*1 Aldgate*

*London*

*EC3N 1RE*

The Financial Ombudsman Service (FOS)

Should you be dissatisfied with the outcome of your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. Contacting the FOS does not affect your right to take legal action.

The FOS's contact details are as follows:

Financial Ombudsman Service

Exchange Tower

London E14 9SR

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

Telephone: +44 (0)30 0123 9123

Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

The European Commission Online Dispute Resolution Platform (ODR)

If you were sold this product online or by other electronic means and within the European Union (EU) you may refer your complaint to the EU Online Dispute Resolution (ODR) platform. Upon receipt of your complaint the ODR will escalate your complaint to your local dispute resolution service – this process is free and conducted entirely online. You can access the ODR platform on <http://ec.europa.eu/odr>. This platform will direct insurance complaints to the Financial Ombudsman Service. However, you may contact the FOS directly if you prefer, using the details as shown above.

## Data Protection Notice

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](mailto: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

# Section 1 - Professional Indemnity Insurance

## Definitions applicable to Section 1

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

### 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 Section.

### Computer system

shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communications system, world-wide web site, internet site, intranet site, extranet site or web address(es).

### Damages

shall mean monetary relief.

### Defence costs and expenses

shall mean all costs and expenses incurred, with the prior consent of the **Insurer**, in the investigation, defence and settlement of any claim first made against the **Insured** or of any **Circumstance** first notified during the **Period of insurance**.

### Documents

shall mean digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

### Excess

is the first amount paid in respect of each claim 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 Policy. 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 Policy.

### Jurisdiction

means the jurisdiction stated in the Schedule against Section 1. Where no jurisdiction is stated in the schedule then the **Jurisdiction** shall be Worldwide but excluding the United States of America (including its territories and /or possessions) and Canada.

## 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.

## Interpretation

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

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 Policy 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 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.

software or to any adaptation or amendment to Packaged Software;

## Exclusions Applicable to Section 1

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

### 1. Employers liability

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

### 2. Bodily injury/property damage

for bodily injury, 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 negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

### 3. Land buildings etc

arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

### 4. Dishonesty

arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission 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

### 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 Policy would be, entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

### 11. Geographical limits

in respect of work carried out outside the Geographical Limits stated in the Schedule;

### 12. Legal action

in respect of an action for **Damages**:

- a. brought outside the **Jurisdiction** (including the enforcement within the **Jurisdiction** of a judgment or finding of another court or tribunal that is not within the **Jurisdiction**);
- b. in which it is contended that the governing law is outside the **Jurisdiction**;
- c. brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other jurisdiction;

### 13. Fines and penalties

for penalties, fines, multiple, exemplary, liquidated or other non-compensatory **Damages** awarded other than in actions brought for libel, slander or defamation in so far as they are covered by this Policy 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 Policy;

#### 15. Retroactive date

made by or against or incurred by the **Insured** arising from any act or omission or originating cause that occurred prior to the Retroactive date stated in the Schedule;

#### 16. Radioactive contamination or explosive nuclear assemblies

directly or indirectly caused by or contributed to by or arising from

- a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

#### 17. Excess

for the amount of or less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under this 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 Policy;

#### 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 Policy;

#### 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 and 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 Section 1

## 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 [mail@tmhcc.com](mailto:mail@tmhcc.com)

If by telephone, please dial the following number and ask for a PI claims underwriter:

Telephone- +44 (0)1656 868000

If by post:

PI Claims,  
6 Old Field Road  
Bocam  
Park  
Bridgend  
CF35 5LJ

## 3. Conduct of claims

3.1 Following notification under condition 1. above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any such claim.

Nevertheless neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Queens Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.

3.2 The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim. For the avoidance of doubt the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.

### 3.3 Waiver of subrogation against Employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment brought about or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act.

### 3.4 Dishonest or Fraudulent act or Omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission of any former or present 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 Policy.

## Special Conditions Applicable to Section 1

### 1. Policy construction and disputes

Notwithstanding General Condition 1, the choice of law governing this Section and of any 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 Policy. In the event of any dispute arising between the **Insured** and the **Insurer** concerning this Policy, subject to Special Condition 2 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. 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 Policy 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.

## 3. 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.

## 4. Institution compensation fund

If the **Insured's** relevant governing professional body (the "Institute") becomes subrogated to the **Insured's** rights under this Policy 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.

## 5. Non avoidance and prejudice

- 1.1 The **Insurer** will not:
  - a. avoid this policy;

- b. claim to be discharged from any or all liability to provide any indemnity (in whole or in part) under this Section; or
- c. (subject to Special Conditions 1.3 and 2.1 below) seek to reduce the indemnity due under this 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 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.

## 6. Non-Compliance

Where the **Insured's** breach of or non-compliance with any condition of this 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 Notification and Claims Conditions Applicable to Section 1, 3.4, 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.

## 7. Extended policy period

The **Period of insurance** in respect of Section 1 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.

# Section 2 – General Liability Insurance

proceedings not consequent upon a deliberate act or omission

arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of Indemnity by this Section.

## Definitions applicable to Section 2

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

### Damage

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

### Damages

shall mean monetary compensation capable of being awarded in civil proceedings but excluding aggravated and exemplary damages.

### Defence costs

shall mean all costs and expenses incurred by the **Insured** with the **Insurer's** prior written consent in the investigation, defence or settlement of any claim under this Section other than in respect of any actions in the United States of America or Canada and shall include legal expenses:

1. arising out of representation at any Coroner's Inquest or Fatal Accident Inquiry;
2. arising out of any criminal prosecution or proceedings relating to an offence alleged to have been committed during the **Period of insurance** and in the course of the **Professional business** in respect of matters which may form the subject of indemnity by this Section (including with the **Insurer's** prior consent **Employees**, partners or directors of the **Insured**) provided that:
  - 2.1 the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution;
  - 2.2 the **Insurer** shall not be responsible for **Defence costs** where at the **Insurer's** discretion they may require the opinion of counsel (whose appointment is at the **Insurer's** sole discretion) as to whether or not such costs should extend or continue to extend to the support of such defence and where such counsel's opinion is that there is no reasonable defence to the prosecution;
  - 2.3 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of the United Kingdom Health & Safety at Work Act 1974 (and/or any legislation of similar effect) are limited to prosecutions under Section 33(1)(a) to (b) of the Act or similar duty imposed under legislation in Northern Ireland, the Isle of Man or the Channel Islands;
  - 2.4 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of Part II of the Consumer Protection Act 1987 will be limited to

### Excess

is the first amount paid in respect of each claim as stated in the Schedule under Section 2. The **Excess** is not payable in respect of **Defence costs**.

### Injury

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

### Offshore

shall mean from the time an **Employee** of the **Insured** embarks onto a conveyance at the point of final departure to an offshore rig or offshore platform until such time the **Employee** disembarks from the conveyance onto land upon return from an offshore rig or an offshore platform.

### Pollution

shall mean pollution or contamination of the atmosphere or of any water, land or other tangible property.

### Product

shall mean any property after it has left the custody or control of the **Insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.

### Terrorism

shall mean an activity that (1) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof and (2) appears to be intended to (i) intimidate or coerce a civilian population or (ii) disrupt any segment of the economy of a government de jure or de facto state or country; or (iii) overthrow, influence or affect the conduct of policy of any government de jure or de facto by intimidation or coercion; or (iv) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

# Indemnity Clauses

## 1. Section 2A – Employers’ Liability

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

## 2. SECTION 2B, C and D – Public, Products and Pollution Liability

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

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

## Indemnity Limits

### In respect of section 2A

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

### In respect of sections 2B, C and D

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

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

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

## Insuring Clauses

### Section 2A – Employers' Liability

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

The indemnity granted by this Section is deemed to be in accordance with the provisions of any law relating to compulsory insurance of liability to **Employees** in Great Britain, Northern Ireland, the Isle of Man, the Island of Jersey, the Island of Guernsey, the Island of Alderney and offshore installations in territorial waters around Great Britain and its Continental Shelf but the **Insured** shall repay to the **Insurer** all sums paid by the **Insurer** which the **Insurer** would not have been liable to pay but for the provisions of such law, ordinance or statute.

### Section 2B - Public Liability

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

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

### Section 2C - Products Liability

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

### Section 2D - Pollution Liability

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

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

## Conditions Applicable to Sections 2B, C and D

### 1. Bona Fide Subcontractors Condition

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that all bona fide subcontractors engaged by the **Insured** shall have in full force and effect throughout the duration of their contract with the **Insured**, insurances as follows:

1. Employers Liability insurance in respect of the **Insured's** liability at law for **Injury** to any **Employee**;
2. Public/Products Liability insurance in respect of the **Insured's** liability at law for:
  - a. **Injury** to any person;
  - b. loss of or damage to tangible property;
  - c. nuisance trespass or interference with any easement right of air light water or way.

with a Limit of Indemnity of at least GBP 5,000,000 or that shown in the Schedule in respect of Section 2 (whichever is the lower) any one occurrence or series of occurrences arising out of one original cause.

and that:

1. such insurances contain an Indemnity to Principals Clause;
2. the **Insured** shall have obtained and retained a copy of written evidence of such insurances.

For the purposes of this condition the term bona fide subcontractors means any independent subcontractor engaged by the **Insured** under a contract for services.

### 2. Burning welding and cutting conditions

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that the following precautions shall be adhered to on each occasion where the **Insured** or persons acting on behalf of the **Insured** are using any oxy-acetylene or electric welding or cutting/grinding equipment or blow lamp or blow torch or hot air gun:

1. the immediate area in which the operation is to be carried out must be segregated to the greatest practicable extent by the use of screens made of metal and/or fire retardant material;
2. the whole of this segregated area must be adequately cleaned and freed from combustible material before operations commence;
3. if work is to be carried out overhead the area beneath must be similarly cleaned and combustible material removed;
4. combustible floors/substances in or surrounding this segregated area must be liberally covered with sand or protected by overlapping sheets of incombustible material;
5. where work is being carried out in any enclosed area an additional **Employee** of the **Insured** or an

employee of the occupier shall be present at all times to guard against an outbreak of fire;

6. no work should be carried out unless specifically authorised by the occupier who should also be asked to approve the safety arrangements;
7. the following must be kept available for immediate use near the scene of operations
  - a. suitable and fully charged fire extinguishers and/or
  - b. a hose connected to the nearest hydrant with water turned on and controllable at the nozzle of the hose in readiness for immediate use and tested prior to the commencement of the work;
8. a thorough examination must be made in the vicinity of the work approximately one hour after the termination of each operation. In the event that it is not practicable for such examination to be carried out by the **Insured's** own **Employee** then appropriate arrangements must be made with the occupier;
9. before "burning off" metal work built into or projecting through walls or partitions an examination must be made to confirm that the other end of the metal is not in a hazardous proximity to combustible material which may be ignited by the conduction of heat.

Furthermore where the **Insured** or persons acting on behalf of the **Insured** burns debris it is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that the following precautions are adhered to on each occasion:

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



## Exclusions

### Exclusions applicable to sections 2A, B, C and D

These Sections do not provide indemnity in respect of liability:

1. arising in connection with:
  - a. any work of demolition except demolition solely undertaken with hand held tools and of structures not exceeding 5 metres in height by **Employees** in the direct service of the **Insured** when such work forms an ancillary part of a contract for construction, alteration or repair carried out by the **Insured**;
  - b. the construction, alteration or repair of bridges, towers, steeples, chimney shafts, blast furnaces, viaducts, mines, dams or transport tunnels;
  - c. pile driving, tunnelling or quarrying;
  - d. the use of explosives for any purpose;
  - e. excavations below 3 metres in depth;
  - f. any work carried out at a height in excess of 15 metre;
  - g. ship repair/ship breaking and/or work on vessels or aircraft;
2. directly or indirectly arising from:
  - a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof but as far as concerns Section 2A this Exclusion will only apply where such legal liability is:
    - i. that of any principal;
    - ii. accepted under agreement and would not have attached in the absence of such agreement;
3. which forms the subject of insurance by any other Policy and this Policy shall not be drawn into contribution with such other insurance;
4. arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### Exclusions Applicable to Section 2A – Employers' Liability

1. This Section does not provide any indemnity in respect of any liability for which compulsory motor insurance or security is required under the Road Traffic Act 1988 as

amended by the Motor Vehicles (Compulsory Insurance) Regulations 1992 and the Road Traffic (Northern Ireland) Order 1981 as amended by the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1993 or any other Compulsory Road Traffic Legislation.

2. This Section does not provide indemnity in respect of:
  - a. medical costs and expenses incurred by the **Insured** and/or any employee of the **Insured**
  - b. repatriation costs and expenses incurred by the **Insured** and/or any employee of the **Insured** who is injured outside Great Britain Northern Ireland the Channel Islands or the Isle of Man.

## Exclusions Applicable to Section 2B – Public Liability

This Section does not provide indemnity in respect of liability:

1. arising out of ownership, possession or use of any mechanically propelled vehicle where a Certificate of Motor Insurance or surety is required under any Road Traffic Act or similar legislation other than:
  - a. vehicles designed primarily to operate as tools of trade (which term shall be deemed to include any plant primarily designed to operate on or about a contract site);
  - b. other vehicles brought on to site for use on site.

This exclusion shall not apply in respect of the use of vehicles belonging to **Employees** or third parties in connection with the **Professional business** unless indemnity is provided:

- a. to any **Employee**;
  - b. to third parties;
  - c. to the **Insured** under any other insurance;
  - d. in respect of loss of or damage to any vehicle of any **Employee** or third party to whom the indemnity is provided or any property conveyed therein or thereon;
2. arising out of the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length and then only whilst on inland waterways);
  3. for **Damage** to property owned, leased or hired by or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
    - a. premises (or the contents thereof) temporarily occupied by the **Insured** for work therein (but no indemnity is granted for **Damage** to that part of the property on which the **Insured** is working and which arises out of such work);
    - b. **Employees'** and visitors' clothing and personal effects including vehicles and their contents;
    - c. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement.

## Exclusions applicable to section 2C – Products Liability

This Section does not provide indemnity in respect of liability:

1. for **Damage** to any **Product** or part thereof;
2. for costs incurred in the repair, reconditioning or replacement of any **Product** or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning or replacement;
3. arising out of the recall of any **Product** or part thereof;

4. arising out of any **Product** which with the **Insured's** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft except where specifically stated to be included in the **Professional business**;
5. arising out of **Terrorism**;
6. arising out of any **Product** which is intended for incorporation into any marine equipment upon which the navigation or safety of a waterborne vessel depends except where specifically stated in the **Professional business**;
7. arising out of any **Product** which is intended for use in a motor vehicle except where especially stated to be included in the **Professional business**;
8. arising out of any **Product** which is intended for use in connection with railways or tramways except where especially stated to be included in the **Professional business**.

## Exclusions applicable to section 2D – Pollution Liability

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

1. for **Damage** to premises presently or at any time previously owned or tenanted by the **Insured**;
2. for **Damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by the **Insured** or otherwise in the **Insured's** care custody or control.

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

These Sections do not provide indemnity in respect of liability:

1. for **Injury** to any **Employee**;
2. arising out of the deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**;
3. arising out of liquidated damages clauses, penalty clauses or performance warranties until proven that liability would have attached in the absence of such clauses or warranties;
4. arising from exposure or alleged exposure to asbestos or materials or products containing asbestos;
5. for an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under the Policy;
6. arising out of or in connection with the design, sale or supply of computer software (which shall not include the media or its packaging on which such software is stored);
7. arising out of or in connection with advice, design, specification, formula or other breach of professional duty by the **Insured**;

8. for loss, damage, deterioration of or corruption (whether permanent or temporary) to computer programs or electronic data including consequential or pure financial loss;
9. arising out of work on any part of any aerodrome or airport provided for take off or landing of aircraft or the movement of aircraft or parking of aircraft including associated surface roads and ground equipment parking areas.

## Extensions to Section 2

### 1. Principals

Where the **Insured** so requests the **Insurer** agrees to indemnify any Principal of the **Insured** but only to the extent that such liability arises solely out of the work performed for the Principal by or on behalf of the **Insured** and such Principal shall be subject to and comply with the terms, Conditions and Exclusions herein and this clause shall in no way operate to increase the Indemnity Limits as stated in the Schedule.

### 2. Indemnity to others

At the request of the **Insured** the indemnity granted extends to:

- a. any party who enters into an agreement with the **Insured** for any purposes of the **Professional business** but only to the extent required by such agreement to grant such indemnity and subject always to Exclusion 3.c) to Section 2B and Exclusion 3. to Sections 2B, C and D;
- b. officials of the **Insured** in their business capacity arising out of the performance of the **Professional business** and/or in their private capacity arising out of their temporary engagement of the **Insured's Employees**;
- c. any person or firm arising out of the performance of a contract with the **Insured** constituting the provision of labour only;
- d. the officers, committee and members of the **Insured's** canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;
- e. the personal representatives of any person indemnified by reason of this Extension in respect of liability incurred by such person;

provided always that all such persons or parties shall observe fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the **Insured**.

### 3. Cross liabilities

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

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

The **Insurer** at the request of the **Insured** will pay to the **Employee** or the personal representatives of the **Employee** the amount of any **Damages** and awarded costs to the extent that they remain unsatisfied in whole or in part six months after the date of a judgment being obtained within any court in Great Britain,

Northern Ireland, the Channel Islands or the Isle of Man:

- a. by any **Employee** or the personal representatives of any **Employee** in respect of **Injury** sustained by the **Employee** arising out of and in the course of their employment by the **Insured** in the **Professional business** and caused during the **Period of Insurance**; and
- b. against any company or individual operating from premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man,  
provided always that:
  - there is no appeal outstanding against such judgment; and
  - if any payment is made under the terms of this Extension the **Employee** or the personal representatives of the **Employee** shall assign the benefits of such judgment to the **Insurer**.

The liability of the **Insurer** for all amounts payable under this Extension relating to any claimant or number of claimants in respect of an occurrence or series of occurrences arising out of one originating cause shall not exceed the Indemnity Limit stated in the Schedule against section 2A.

## 5. Compensation for court attendance

In the event of any of the persons stated below attending court as a witness at the request of the **Insurer** in connection with a claim in respect of which the **Insured** is entitled to indemnity under these sections the **Insurer** will provide compensation to the **Insured** at the following rates per day for each day on which attendance is required:

- a. any director or partner of the **Insured**: GBP 250;
- b. any **Employee** of the **Insured**: GBP100.

## Notification and Claims Conditions Applicable to Section 2

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

1. The **Insured** shall give written notice to the **Insurer** as soon as reasonably practicable of any occurrence that may give rise to a claim under this Policy and shall give all such additional information as the **Insurer** may require. Every letter of claim, writ, summons or process and all documents relating thereto and any other written notification of claim shall be forwarded unanswered to the **Insurer** immediately they are received.

All claims and enquiries should be addressed to:

Tokio Marine HCC - International Group

Fitzwilliam House

10 St Mary Axe

London

EC3A 8BF

Telephone: 020 7680 3000

The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** or their appointed agents to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.

2. No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer** who shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or **Damages** or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.
3. The **Insured** shall give notice, as soon as reasonably practicable, of any fact or event which materially affects the risks insured by this Policy.
4. Where the premium is provisionally based on the **Insured's** estimates the **Insured** shall keep accurate records and after expiry of the **Period of insurance** declare as soon as possible such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid by or allowed to the **Insured** as the case may be subject to any minimum premium that may apply. Where such estimates include remuneration to **Employees** the required declaration shall also include remuneration to persons engaged by the **Insured** to perform a contract constituting the provision of labour only.
5. The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the Indemnity limit (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being

made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim. For the avoidance of doubt, the **Insurer** shall have no liability to pay **Defence costs** and expenses incurred after the date upon which any such payment is made.

6. Except where the Indemnity Limit is inclusive of Defence costs if a payment exceeding the Indemnity Limit has to be made to dispose of a claim the liability of the Insurer to pay all Defence costs in connection therewith shall be limited to such proportion of the said Defence costs as the Indemnity Limit bears to the amount paid to dispose of a claim



