

PROFESSIONAL INDEMNITY INSURANCE

DEFINITIONS

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

Circumstance

Shall mean any circumstance or state of affairs or event which might reasonably be expected to give rise to a claim against the **Insured** or a claim by the **Insured** under the Policy.

Computer system

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

Defence costs and expenses

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

Are 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) and items of recorded information in a format for use with a computer.

Employee

Is

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

Excess

Is the first amount paid in respect of each claim as stated in the schedule. The **Excess** is not payable in respect of **Defence costs and expenses**.

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

Insured

Is any person or firm stated in the schedule and includes any current or previous partner, director, principal, member or **Employee** of any firm or company stated in the schedule and any other person who becomes a partner, director, principal, member or **Employee** of the firm.

Insurer

Means HCC International Insurance Company PLC.

Period of insurance

Is that as stated in the schedule.

Personal appointment

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

Professional business

Is the business of the **Insured** as stated in the Schedule including the holding of any **Personal appointment**.

Proposal

Shall mean the written proposal and any renewal declaration signed by the **Insured** together with any other information supplied by the **Insured** to the **Insurer** before inception or renewal of this Policy.

Virus

Shall mean any unauthorised executable code that replicates itself through a **Computer system** or network whether termed a virus, logic bomb, worm, Trojan Horse or known by any other name.

BASIS OF THE CONTRACT

The **Proposal** shall be the basis of and incorporated in this contract.

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** for which the **Insured** is legally liable to pay damages (including claimant's costs and expenses) and arising out of the ordinary course of the **Professional business**, in consequence of:-

- a) Breach of professional duty;
- b) Dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given under this Policy 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;
- c) Libel or slander;
- d) Unintentional breach of confidentiality;
- e) Unintentional infringement of intellectual property rights;
- f) The loss of or damage to **Documents**.

2. Costs for infringement of copyright

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.

3. All legal costs incurred with the **Insurer's** prior consent for representation at any inquiry or other proceeding which has, in the **Insurer's** sole opinion, a direct relevance to any claim, **Circumstance** or event which could form the subject of indemnity under this Policy.

4. Defence costs and expenses

In respect of Insuring Clause 1, the **Insurer** will pay in addition to the **Indemnity limit** all **Defence costs and expenses** provided that,

- a) if a paid 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 of the paid claim.
- b) in the event that the **Insurer** elects to make a payment to the **Insured** pursuant to Notification and Claims Condition 2.2 then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made.

EXCLUSIONS

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 unless such claim emanates from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

3 Land Buildings etc

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

4 Dishonesty

Arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the **Insured** or any **Employee**, except as covered by Insuring Clause 1b);

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 and which is more onerous than any duty that would otherwise be implied by common law or statute;

6 Products

Arising out of or relating to:

- a) goods or products sold, supplied, repaired, altered, manufactured, installed or maintained or
- b) buildings, building works or physical structures constructed, repaired, installed, erected, removed or demolished

by the **Insured** or any related company or sub-contractor of the **Insured**;

7 Insolvency/Bankruptcy of Insured

Arising out of or relating directly or indirectly to the insolvency 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;

9 Circumstances known at inception

Arising out of any **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware at inception of this Policy, whether notified under any other insurance or not;

10 Other Insurance

In respect of which the **Insured** is 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 stated in the Schedule (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.

Where no Jurisdiction is specified in the Schedule then the Jurisdiction shall be Worldwide but excluding

1. the United States of America, its territories and/or possessions or
2. Canada.

13 Fines and Penalties

For penalties, fines, multiple, exemplary, liquidated or other non-compensatory damages awarded other than in actions brought for defamation as far as they are covered by the Policy;

14 Claims by Financially associated persons or entities

Made upon 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 and which would, but for this exclusion, be covered by this Policy;

15 Retroactive date

Made by or against the **Insured** arising from any act or omission 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 The Excess

For an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under the Policy.

18 War

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

19 Terrorism

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

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 & Toxic Mould

Arising directly or indirectly out of or resulting from or in consequence of or in any way involving:

- a) Asbestos or any materials containing asbestos in whatever form or quantity; or
- b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- c) any action taken by any party in relation to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of (to include the investigation of, testing for, detection, monitoring, treating, remediating or removal of) any fungi, moulds, spores or mycotoxins of any kind whether in response to any governmental or regulatory order, requirement, directive, mandate, decree or otherwise.

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.

21 Other Appointments

Made against any **Insured** in the capacity of:

- a) director or officer of the **Insured** or of any other company or arising out of the management of the **Insured** or of any other company or
- b) trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise.

22 Trading losses

Arising out of :

- a) any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);
- b) the actual or alleged over-charging or improper receipt of fees by the **Insured**.

23 Virus

Arising directly or indirectly from any **Virus**.

24 Patents

Notwithstanding Insuring Clause 1e), arising directly or indirectly from the infringement of any patent.

NOTIFICATION AND CLAIMS CONDITIONS

1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this Policy the **Insured**

- 1.1 shall inform the **Insurer** as soon as possible, and in any event within 10 working days (provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**) of the receipt, awareness or discovery 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 made shall be deemed to have been made during the **Period of insurance**;

- 1.2 shall not, in the event of a claim, or the discovery of information which may give rise to a claim, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the 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.

2. Conduct of Claims

- 2.1 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.

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

GENERAL CONDITIONS

1 Policy Construction and Disputes

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

2 Waiver of subrogation against Employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment 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 Dishonest or Fraudulent Act or Omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this Policy.

4 Fraudulent Claims

If the **Insured** shall submit any claim knowing the same to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims hereunder shall be forfeited.

5 Contracts (Rights Of Third Parties) Act 1999

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

6 Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by fourteen days notice given in writing to the **Insured** on the basis of the **Insurer** receiving or retaining payment of premium pro rata to the period that the **Insurer** will have been on risk.

7 Invalidity

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

8 Notices

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

- a) in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker.
- b) in the case of the **Insurer**, to HCC International Insurance Company PLC at Walsingham House, 35 Seething Lane, London EC3N 4AH.

HIGHER LIMITS WARRANTY

It is warranted that the **Insured** shall carry no insurance cover in excess of that provided hereunder.

PREMIUM PAYMENT CLAUSE

The **Insured** undertakes that the premium will be paid in full to **Insurers** within 60 days of inception of this Policy (or, in respect of instalment premiums agreed by **Insurers**, when due).

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 the 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.

All other terms and conditions of this Policy remain unaltered.