

I-Tech

Professional Multi Risk Insurance PMR HCC I-Tech IRL 1220 TMI

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

means:

- 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 or entity acting as a freelance consultant;

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

Insured

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

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

Insurer

means Tokio Marine Europe S.A. Irish Branch.

Period of insurance

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

Professional business

is the business of the **Insured** as stated in the **Schedule** including **Multimedia activities** but in respect of Section 1 shall mean only the professional services of the **Insured's** business.

General Conditions

1. Policy construction and disputes

Irish Law governs this Policy. 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 Irish Law. 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.

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 Ireland 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. In the event of any dispute arising between the **Insured** and the **Insurer** concerning this Policy the parties submit to the courts of Ireland who shall have exclusive **Jurisdiction** to determine any such dispute.

2. 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.

3. Other parties

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights to enforce any term of this Policy, save as is conferred upon them by Law / the operation of S.21 and S.22 of Consumer Insurance Contracts Act 2019.

4. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by 30 days' notice given in writing to the **Insured** or in accordance with the 14 day cooling off period provided in the S.11 (1) of Consumer Insurance Contracts Act 2019. This Policy may be cancelled by or on behalf of the **Insurer** by thirty days notice given in writing to the **Insured**.

5. Invalidity

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

6. Notices

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

- a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker.
- b. in the case of the **Insurer**, to Tokio Marine Europe S.A. Irish Branch at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

7. Subscribing Insurers

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

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 confers provides) are not assignable to any third party without the express approval of the **Insurer** confirmed by way of an endorsement. in writing by the **Insurer**.

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. Alterations in Risk

The **Insured** is required to notify the **Insurers** of all material facts or alterations in the risk in accordance with Section 15 of the Consumer Insurance Contracts Act 2019 which come to the **Insureds** knowledge or arise during the **Period of insurance**.

13. Difference in conditions

- a. The provisions within the Consumer Insurance Contracts Act 2019 are incorporated into the terms of this Policy.
- b. Paragraph a. only applies to provisions of the Consumer Insurance Contracts Act 2019 which are in force and have been commenced.

In the event of any inconsistency between the terms and conditions of this Policy and the Consumer Insurance Contracts Act 2019, the provisions of the Consumer Insurance Contracts Act 2019 shall prevail.

14. 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:

*The Head of Compliance
Tokio Marine Europe S.A
26, Avenue de la Liberté,
L-1930 Luxembourg*

Should the **Insurer** be unable to resolve any difficulty directly with you to your satisfaction, you may be entitled to refer the dispute to the Insurance Ombudsman at the ACA or to the Insurance Supervisory Authority In Luxembourg (Commissariat Aux Assurances – CAA) who will review your case and who may be contacted at:

ACA
*Service Mediation
12, rue Erasme
L-1468 Luxembourg
Website: www.aca.lu*

or

CAA
*7, boulevard Joseph II
L-1840 Luxembourg
Email: commassu@commassu.lu
Website: www.caa.lu*

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 ACA Service Mediation. However, you may contact the ACA or CAA directly if you prefer, using the details as shown above.

Data Protection Notice

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

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

We may disclose your personal information to:

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

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

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

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

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

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:

Breach of contract

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

Circumstance

means any **Circumstance** or state of affairs or event which is likely to give rise to a **Claim** against the **Insured**.

Claim

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

Compensatory damages

means compensatory awards or settlements.

Computer system

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

Defence costs and expenses

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

Deliverables

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

Documents

means digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed **Documents** or forms of

any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

Excess

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

Financially associated person or entity

shall mean:

- 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 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

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

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

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

IT services

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

Jurisdiction

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

Liquidated damages

means a sum of money or formula used to determine a genuine pre-estimate of loss and damage attributable to a specified **Breach of contract** (above any **Excess** stated in the **Schedule**) on the part of the **Insured**, provided that at the time the sum or formula was created and agreed between the parties to the contract as being representative of a fair, reasonable and justifiable reflection of the loss occasioned by the breach. Such sum of money or formula cannot be above any amount that would be recoverable had the **Claim** been made and determined as a common law **Claim for Breach of contract**.

Multimedia activities

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

Notification costs

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

Schedule

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

Virus

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

Insuring Clauses Applicable to Section 1

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

1. Indemnity

Up to the **Indemnity limit** for any **Claim** first made against the **Insured** during the **Period of insurance** for which the **Insured** is allegedly liable to pay **Compensatory damages** (including claimant's costs and expenses) and arising out of the ordinary course of the **Professional business** within the geographical limits stated within the **Schedule**, in consequence of:

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

2. Dishonesty

Up to the **Indemnity limit** for any **Claim** first made against the **Insured** during the **Period of insurance** for which the **Insured** is allegedly liable to pay **Compensatory damages** (including claimant's costs and expenses) and arising out of the ordinary course of the **Professional business** within the geographical limits stated within the **Schedule**, as a consequence of dishonest, fraudulent or malicious act or omission of

any former or present **Employee**. (which for the avoidance of doubt for the purpose of this insuring clause does not include any principal, partner, member or director of the **Insured**).

3. Data protection defence costs

Up to a maximum of EUR 250,000 in the aggregate in the **Period of insurance**, in respect of legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any criminal proceedings brought under The Data Protection Act or similar legislation provided always that:

- a. the act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the ordinary course of the **Insured's Professional business**;
- b. the **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- c. the **Insurer** shall have no liability to pay costs incurred subsequent to a plea or finding of guilt on the part of the **Insured**, or in the event that counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable.

The **Insurer's** total liability under Insuring Clauses 3) and 7) shall not exceed EUR 250,000 in the aggregate in the **Period of insurance** and the **Insurer** shall have no liability to pay for the **Insured's** own costs and expenses.

4. Reputation management

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

5. Costs for prosecuting infringement of the Insured's intellectual property rights

Up to a maximum of EUR 25,000 in the aggregate in the **Period of insurance**, for the reasonable and necessary costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, in the pursuance of any **Claim** first made by the **Insured** against a third party during the **Period of insurance**, for infringement of intellectual property rights first discovered by the **Insured** during the **Period of insurance** where the ownership of such rights is vested in the **Insured**.

For the purposes of this Insuring Clause **Insurers** will only give prior consent where the **Insured** has provided, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the

Insured's intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success.

6. Irrecoverable fees

For matters first notified by the **Insured** during the **Period of insurance** relating to amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a **Claim** for more than the amount owed. In such **Circumstances**, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the amount owed if they consider that it will avoid a legitimate **Claim** for a greater amount. If, following this, a **Claim** still arises then the amount paid under this Clause will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers the debt then the amount paid by the **Insurer** must be repaid to them less the **Insured's** reasonable expenses of recovering the debt due.

7. Costs for representation

Up maximum of EUR 250,000 in the aggregate in the **Period of insurance** for all reasonable and necessary legal costs incurred by the **Insured** with the **Insurer's** prior written consent for representation at any inquiry or other proceeding which has, in the **Insurer's** sole opinion, a direct relevance to any **Claim**, **Circumstance** or event which could form the subject of indemnity under this Section. For the avoidance of doubt, Costs for representation cover does not apply to Insuring Clause 5.

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

Extensions Applicable To Section 1

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

1. Joint ventures

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

2. Indemnity to principals

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

3. Mergers and acquisitions

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

- a. purchases assets or acquires liabilities from another entity in an amount no greater than 10% of the assets of the **Insured** as listed in its most recent financial statement; or
- b. acquires another entity whose annual revenues are no more than 10% of the annual revenues of the **Insured** for their last completed financial year; and
- c. there is no material deviation to the **Insured's Professional business**; and
- d. prior to the acquisition of the acquired company not being aware of any professional indemnity **Claims** or **Circumstances** that could give rise to a **Claim**;

then Section 1 of this Policy shall automatically include such entity as an **Insured** but only in respect of any act or omission occurring on or after the date of merger or acquisition unless otherwise agreed by the **Insurer**;

4. Sub-contractors

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

5. Notification costs

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

6. Compensation for court attendance

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

- a. any director or partner of the **Insured**: EUR 250;
- b. any **Employee** of the **Insured**: EUR 100;

For the avoidance of doubt the compensation for court attendance provided under Section 1 is not additional to the compensation provided by Extensions to Section 2, 7).

7. Defence costs and expenses

In respect of Insuring Clause 1 the **Insurer** will pay in addition to the **Indemnity limit** (unless stated otherwise) 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 3.2 then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made.

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

Exclusions Applicable To Section 1

In accordance with the provisions of S.15(6) of Consumer Insurance Contracts Act 2019, The the **Insurer** shall not be liable to indemnify the **Insured** against any **Claim** or direct financial loss suffered by the **Insured**:

1. Asbestos

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

2. Bodily injury/property damage

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

3. Claims or Circumstances known at inception

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

4. Commercial disputes

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

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

5. Costs and expenses incurred without prior consent

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

6. Deliberate acts

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

7. Financially associated persons or entities

made against the **Insured** by any **Financially associated person or entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any **Claim** brought against such **Financially associated person or entity** by an independent third party which would, but for this exclusion, be covered by this Policy;

8. Financial & Mortgage 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, loan, mortgage, credit or leasing agreement;

9. Fines and penalties

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

10. Gaming, gambling or lotteries

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

11. Insolvency/bankruptcy of Insured

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

12. Legal action

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

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

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

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

14. Obscenity

arising from any obscenity, blasphemy or pornographic material;

15. Other appointments

made against any **Insured** in the capacity 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;

16. Patents

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

17. Radioactive contamination or explosive nuclear assemblies

directly or indirectly related to, caused by or contributed to, by or arising from:

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

18. Recall costs

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

19. Retroactive date

arising from any act or omission that occurred prior to the Retroactive Date stated in the **Schedule**;

20. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind;

21. Takeover or merger

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

22. Third party defect

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

23. Trading losses

arising out of:

- a. any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);
- b. loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, JV partner or similar because of any misstatement or misrepresentation made by the **Insured**;
- c. the actual or alleged over-charging or improper receipt of fees by the **Insured**;

24. Utility provider

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

25. Virus

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

26. War and Terrorism

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

27. Medical Malpractice

arising directly or indirectly out of or in connection with:

- a. the provision of or omission to provide any medical, clinical or surgical diagnosis, advice, treatment, remedy or prescription; or
- b. any breach of professional duty by any person providing counselling, therapy or similar treatment;

28. Physical, Emotional and Sexual Abuse

alleging physical, emotional or sexual abuse, sexual harassment, sexual molestation, racial discrimination or unlawful detention by any party, including but not limited to the **Insured** or any **Employee** or agent of the **Insured**;

29. Insurance advice

arising directly or indirectly from the provision by the **Insured** of insurance advice or advice on the arranging, underwriting or managing of any insurance product, whether as principal, as an agent or intermediary for another party;

30. Will writing or estate planning

arising directly or indirectly from will writing, estate planning or advice on the operation of or administration of any trust or the misuse of any information relating to them or the breach of any related legislation or regulation.

Matters Insurable Elsewhere

1. 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;

2. 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;

3. Land, buildings, aircraft, watercraft or vehicles

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

4. 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.

- d. the discovery of reasonable cause for suspicion of dishonesty or fraud provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, or if the **Insured** renews this Policy with the **Insurer**, within 7 days after its expiry.

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

- 1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability, make any offer for or settle any **Claim**, or incur any costs or expenses in connection with any such **Claim** or **Circumstance**, without the prior written consent of the **Insurer**; and
- 1.3 shall, as soon as practicable given the **Circumstances**, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such **Claim** or relating to the recovery or subrogation process of any settled **Claim**;
- 1.4 shall not destroy evidence, supporting information or documentation without the **Insurer's** prior consent; nor destroy any **Deliverables** or other property relating to a **Claim** under this Policy;

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 Tokio Marine Europe S.A. Irish Branch by either (a) email (b) telephone or (c) first class post.

If by email then such must be addressed to PI Claims and sent to mail@tmhcc.com

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

Telephone- +44 (0)20 7702 4700

If by post:

*PI Claims
Tokio Marine Europe S.A. Irish Branch
Fitzwilliam House
10 St Mary Axe
London EC3A 8BF*

3. Conduct of Claims

- 3.1 Following notification under condition 1 above the **Insurer** shall be entitled at its own expense to take

Notifications and Claims Conditions Applicable To Section 1

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 28 days of the receipt, awareness or discovery during the **Period of insurance** of:
 - a. any **Claim** made against them;
 - b. any notice of intention of a **Claim** against them;
 - c. any **Circumstance**;

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 senior counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested;

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

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

4. Multiple Claims from a single source

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

Conditions Applicable to Section 1

1. Dishonest or fraudulent act or omission

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

2. Reasonable steps to avoid Loss

Without prejudice to the Notification and **Claim** Conditions in this Policy, the **Insured** shall take all reasonable steps before entering into a contract for **IT Services** or **Deliverables** to:

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

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

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

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 caused or contributed to by any act or omission of the **Employee** or former **Employee** which caused by such a person intentionally or recklessly and with knowledge that the loss would probably result.

Section 2 – Liability Insurance

Definitions applicable to Section 2

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

Damage

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

Damages

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

Defence costs

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

1. arising out of representation at any Coroner's Inquest or Fatal Accident Inquiry;
2. arising out of any criminal prosecution or proceedings relating to an offence alleged to have been committed during the **Period of insurance** and in the course of the **Professional business** in respect of matters which may form the subject of indemnity by this Section (including with the **Insurer's** prior consent **Employees**, partners or directors of the **Insured**) provided that:
 - 2.1 the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution;
 - 2.2 the **Insurer** shall not be responsible for **Defence costs** where at the **Insurer's** discretion they may require the opinion of counsel (whose appointment is at the **Insurer's** sole discretion) as to whether or not such costs should extend or continue to extend to the support of such defence and where such counsel's opinion is that there is no reasonable defence to the prosecution;
 - 2.3 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of the United Kingdom Health & Safety at Work Act 1974 (and/or any legislation of similar effect) are limited to prosecutions under Section 33(1)(a) to (c) of the Act or similar duty imposed under legislation in Northern Ireland, the Isle of Man or the Channel Islands or the Republic of Ireland Safety Health & Welfare at Work Act 2005;

- 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 or the equivalent in the Republic of Ireland will be limited to proceedings not consequent upon a deliberate act or omission arising out of the defence of any proceedings in a Court of Summary **Jurisdiction** in respect of matters which may form the subject of Indemnity by this Section.

Excess

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

Injury

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

Offshore

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

Pollution

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

Product

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

Terrorism

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

Indemnity Clauses Applicable to Section 2

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 the Republic of Ireland 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 Applicable to Section 2

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 Applicable to Section 2

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**.

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 2A, B, C and D

1. Forklift Truck Condition

In respect of the use of forklift trucks:

1. all operatives are at least 18 years old and;
2. all operatives either:
 - a. hold documentation from an accredited training provider confirming they have completed training in the safe use of forklift trucks or;
 - b. complete a training course in the safe use of forklift trucks through a training provider accredited by an accrediting body that is a member of the Accrediting Body Association;

and

- (i) a refresher course is completed at least every five years and;
- (ii) documentary evidence of all training is retained for a minimum of six years following the cessation of an individual's employment;

and

3. whenever a forklift truck is left unattended, to prevent unauthorised use:

- a. the ignition keys are removed or;
- b. the vehicle is otherwise immobilised;

and

4. the carriage of passengers, unauthorised use and the use of the vehicle other than for its intended purpose or for any purpose outside its design capabilities are prohibited at all times and;
5. the mandatory use of safety restraints is enforced by the **Insured**.

2. Plant Hire Condition

All plant and/or equipment hired out by the **Insured** is done so under the condition that the Hirer fully indemnifies the **Insured** and any personnel supplied by the **Insured** in respect of all **Claims** by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period.

It is also condition precedent that:

- a) such plant and/or equipment is maintained and routinely examined by the **Insured** to check for any defects and written records are retained and;
- b) where plant and/or equipment is supplied with an operator the operator is competent and qualified to operate the item of plant and/or equipment being used and;

- c) where plant and/or equipment is supplied without an operator it is accompanied with the necessary operating and/or safety instructions.

Conditions Applicable to Sections 2A

1. PPE Condition

It is a condition precedent to liability under Section 2A Employers Liability that the **Insured** shall ensure that:

- a. All **Employees** wear task appropriate personal protective equipment when engaged in work where a need for such equipment has been identified or should have been identified and;
- b. All personal protective equipment is regularly maintained, kept in good condition, is fully compliant with European safety standards and is available to **Employees** whenever it is required.

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 EUR 6,500,000 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:
3. such insurances contain an Indemnity to Principals Clause;
4. 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;

3. Rights of Recourse Condition

It is a condition precedent to liability under this Policy that the **Insured** will at all times retain full rights of recourse against those supplying any **Product** or otherwise providing to the **Insured** a service in connection with any **Product** or any component part thereof unless the **Insurer** has agreed in writing to the waiver of such rights.

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, underpinning, tunnelling, mining 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 metres;
 - g. ship repair/ship breaking and/or work on vessels or aircraft;
 - h. handling disposal collection delivery carriage or storage of Hazardous Waste. "Hazardous Waste" shall mean Hazardous Waste as defined in Annex III of Directive 2008/98/EC;
 - i. any flood defence work;
 - j. the construction of any basement or structural alteration of basements;
 - k. loss of or damage to any "Superstructure"

For the purpose of this Exclusion the term "Superstructure" shall mean any building or structure relying on the support provided by any foundation and/or piling and/or underpinning work performed by or on behalf of the **Insured**.

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.
- 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 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 the Republic of Ireland, 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

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. arising out of the removal repair alteration treatment or replacement of either:
 - a. any **Product** or part of any **Product** which is or is alleged to be defective or harmful or fails or is alleged to have failed or is anticipated to fail to perform its intended function or;
 - b. any surrounding premises property or structure within which the Product is incorporated or to which it is attached and where the Product is or is alleged to be defective or harmful or fails or is alleged to have failed or is anticipated to fail to perform its intended function;

For the avoidance of doubt a **Product** shall include any structure or contract works and/or materials for incorporation therein;
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**.
9. directly or indirectly arising out of the failure of any **Product** to fulfil the function for which it is intended;
10. arising out of any **Product** in the United States of America or Canada.
- 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 any **Product** and/or contract work undertaken in connection with any aircraft or 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;
10. arising out of or in connection with physical, emotional or sexual abuse;
11. arising in any way connected with pyrite.
12. arising out of any work undertaken Offshore;
13. arising directly or indirectly out of or in any way involving the combustibility or fire performance of any cladding;
14. arising directly or indirectly with the contamination of any goods transported or otherwise in the care custody or control of the **Insured**;
15. the giving of or application of any hair or beauty treatment;
16. arising directly or indirectly out of any failure and/or any variation and/or fluctuation of the supply of electricity and/or gas and/or water;
17. arising directly or indirectly out of or in any way involving the combustibility or fire performance of any cladding;
18. arising out of or in connection with any filming or film / television production activities unless undertaken by a bona fide subcontractor. For the purposes of this condition the term bona fide subcontractors means any independent subcontractor engaged by the **Insured** under a contract for services;
19. arising out of or in connection with the provision of or omission to provide any medical clinical or surgical diagnosis advice treatment remedy or prescription or any other breach of professional duty provided that this exclusion shall not apply in respect of the provision of emergency first aid for the benefit of any **Employee**, customer or visitor;
20. arising out of or in connection with or contributed to directly or indirectly by the existence of or exposure to magnetic electric or electromagnetic fields or radiation howsoever caused or generated;
21. arising out of or in connection with the failure to adequately secure any premises for which the **Insured** is responsible for. For the avoidance of doubt failure to secure shall include the failure to correctly set any alarm/intruder system;

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

loss of or damage to property lifted and/or moved by cranes or other lifting devices.

Extensions Applicable to Section 2

1. 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**.

2. 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**.

3. Unsatisfied court judgements (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 the Republic of Ireland, 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 the Republic of Ireland, 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.

3. Joint ventures

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

4. Indemnity to principals

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

5. Mergers and acquisitions

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

- a. purchases assets or acquires liabilities from another entity in an amount no greater than 10% of the assets of the **Insured** as listed in its most recent financial statement; or
- b. acquires another entity whose annual revenues are no more than 10% of the annual revenues of the **Insured** for their last completed financial year; and
- c. there is no material deviation to the **Insured's Professional business**; and
- d. prior to the acquisition of the acquired company not being aware of any liability **Claims** or **Circumstances** that could give rise to a **Claim**;

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

6. Compensation for court attendance

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

- a. any director or partner of the **Insured**: EUR 250;
- b. any **Employee** of the **Insured**: EUR 100;

For the avoidance of doubt the compensation for court attendance provided under Section 1 is not additional to the compensation provided by Extensions to Section 1, 6).

Notification and Claims Conditions Applicable to Section 2

Conditions 1, 2, 3, 4, 7 and 8 below are conditions precedent to the **Insured's** right to be indemnified under Section 2 of this Policy.

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

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

2. No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer** who shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or to prosecute in the name of the **Insured** for their own benefit any **Claim** for indemnity or **Damages** or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim** and the **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.
3. The **Insured** shall give notice, as soon as reasonably practicable, of any fact or event which materially affects the risks **Insured** by this Policy.
4. Where the premium is provisionally based on the **Insured's** estimates the **Insured** shall keep accurate records and after expiry of the **Period of insurance**

declare as soon as possible such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid by or allowed to the **Insured** as the case may be subject to any minimum premium that may apply. Where such estimates include remuneration to **Employees** the required declaration shall also include remuneration to persons engaged by the **Insured** to perform a contract constituting the provision of labour only.

5. The **Insurer** may at any time in connection with any **Claim** made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the **Claim** can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the **Claim**. For the avoidance of doubt, the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.
6. Except where the **Indemnity Limit** is inclusive of **Defence Costs** if a payment exceeding the **Indemnity Limit** has to be made to dispose of a **Claim** the liability of the **Insurer** to pay all **Defence Costs** in connection therewith shall be limited to such proportion of the said **Defence Costs** as the **Indemnity Limit** bears to the amount paid to dispose of a **Claim**.
7. The **Insured** shall advise the **Insurer** of all incidents which may give rise to a **Claim** in expiring policies.

The **Insured** shall have an adequate safety statement as required by Section 20 of the Safety Health and Welfare at Work Act 2005.

General Conditions

1. Reasonable steps to avoid loss

Without prejudice to the Notification and **Claims** Conditions in this Section, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any **Claim** or **Circumstances** which could lead to a **Claim** notifiable under this Section.

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