

Miscellaneous

PI Misc Civil AOC IRL 1220 TMI

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.

Circumstance

shall mean any **Circumstance**, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a claim against the **Insured** or a claim by the **Insured** under 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).

Damages

shall mean monetary relief.

Defence costs and expenses

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

Documents

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

Employee

is:

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

- any self-employed person, who is not an independent contractor; and
- 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**. The **Indemnity limit** is additional to the **Excess**.

Financially associated person or entity

shall mean:

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

Indemnity limit

shall mean the **Insurer's** total liability to pay **Damages** and claimant's costs, 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 Tokio Marine Europe S.A. Irish Branch.

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.

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 professional services of the **Insured's** business as stated in the Schedule including the holding of any **Personal appointment**.

Virus

shall mean 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

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 **Damages** and claimant's costs for which the **Insured** is legally liable to pay resulting from claims first made against the **Insured** during the **Period of insurance** and arising out of the ordinary course of the **Professional business**, in consequence of:

- a. Breach of professional duty;
- b. Breach of an express or implied contractual duty to exercise reasonable skill and care;
- c. 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;
- d. Libel, slander or defamation;
- e. Unintentional 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;
- f. Unintentional infringement of intellectual property rights except patents;
- g. The loss of or damage to **Documents**;

- h. Any other civil liability not otherwise excluded.

2. Legal defence costs and expenses

The **Insurer** will pay in addition to any indemnity under Insuring Clause 1, all **Defence costs and expenses** provided that:

- a. if the amount paid or agreed to be paid by or on behalf of the **Insured** to dispose of a claim exceeds the **Indemnity limit** the **Insurer** will only be liable for that proportion of the **Defence costs and expenses** which the **Indemnity limit** bears to the amount paid or agreed to be paid;
- b. in the event that the **Insurer** elects to make a payment to the **Insured** pursuant to Notification and Claims Condition 3.2 then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made.

3. 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.

4. Costs for representation

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 Policy. For the avoidance of doubt Costs for Representation cover does not apply to Insuring Clause 3.

The **Insurer's** total liability under Insuring Clauses 4) 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.

5. Irrecoverable fees

Up to the **Indemnity limit** for amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a claim for more than the amount owed, and which would otherwise be covered

under Insuring Clause 1, provided that such threat is first made against the **Insured** and notified to **Insurers** during the **Period of insurance**. In such **Circumstances**, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the amount owed if they consider that it will avoid a legitimate claim under Insuring Clause 1 for a greater amount. If, following this, a claim under Insuring Clause 1 still arises then the amount paid under this section will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers part or all of the debt then such recovered amount shall be repaid to the **Insurer** less the **Insured's** reasonable expenses of recovering the debt due.

6. Data protection defence costs

Up to a maximum of EUR 250,000 in the aggregate in the **Period of insurance**, for reasonable and necessary legal costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, in the defence of any criminal proceedings brought against the **Insured**, during the **Period of insurance**, under the Data Protection Act 1998 or 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 **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 and expenses 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.

7. Costs of criminal proceedings

For legal costs and expenses incurred with the **Insurer's** prior consent in the defence of any proceedings brought under the prevailing listed building, building regulation or health and safety legislation and any applicable orders or regulations made pursuant to that legislation or any applicable codes of practice or procedures issued by any governing body concerned with health and safety provided always that:

- a. the act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the performance of any **Professional service**;
- 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 4) 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.

8. Court attendance

In the event that the legal advisors acting for the **Insured** require any of the **Insured** or other relevant party (not including expert witnesses) to attend Court or any arbitration or adjudication hearing as witness of fact in connection with any claim, in respect of which the **Insured** is indemnified under this Policy, **Insurers** will pay compensation to the **Insured** at the following rate for each day or part thereof on which attendance is required;

Any principal, partner, member or director of the **Insured** EUR 250.

For the avoidance of doubt the indemnity provided under Insuring Clauses 3), 4), 6), 7), and 8) is not additional to and shall not increase the **Indemnity limit**.

Exclusions

In accordance with the provisions of S.15(6) of Consumer Insurance Contracts Act 2019, 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 arises directly from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

3. Land buildings etc.

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

4. Dishonesty

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

5. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party but only to the extent that such duty is more onerous than any duty that would otherwise be implied by common law or statute;

6. Products

arising out of or relating to:

- 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, liquidation, receivership or bankruptcy of the **Insured**;

8. Seepage and pollution

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

9. Claims or Circumstances known at inception

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

10. Other insurance

in respect of which the **Insured** is, or but for the existence of this Policy would be, entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

11. Geographical limits

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

12. Legal action

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

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

- c. brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other **Jurisdiction**;

13. Fines and penalties

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

14. Claims by financially associated persons or entities

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

15. Retroactive date

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

16. Radioactive contamination or explosive nuclear assemblies

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

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

17. Excess

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

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

21. Other appointments

made against any **Insured** in their capacity as:

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

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. loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, joint venture partner or similar because of any misstatement or misrepresentation made by the **Insured**;
- c. the actual or alleged over-charging or improper receipt of fees by the **Insured**;

23. Virus

arising directly or indirectly from any **Virus**;

24. Patents

arising directly or indirectly from the infringement of any patent;

25. Obscenity

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

26. Libel, slander or defamation

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

27. Restricted recovery rights

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

28. Contractual remedies

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

29. 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;

30. 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;

31. Taxation, competition, restraint of trade

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

32. Official action or investigation

arising from any official action or investigation by or decision or order of any public, local or government body or authority except to the extent covered by Insuring Clause 6 (Data protection defence costs);

33. 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;

34. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**, except as covered under Insuring Clause 1c);

35. Utility provider

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

36. Costs and expenses incurred without prior consent

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

37. Claims by Employees

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

38. 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;

39. 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**;

40. 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;

41. 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.

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**, in writing, 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 to make a claim against them;
 - c. any **Circumstance**;
 - d. the discovery of reasonable cause for suspicion of dishonesty or fraud.

provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, or if the **Insured** renews this 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 arising out of such notified

matters shall be deemed to have been made during the **Period of insurance**;

- 1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability, make any offer for or settle any claim, or incur any costs or expenses in connection with any such claim or **Circumstance**, without the prior written consent of the **Insurer**; and
- 1.3 shall, as soon as practicable given the **Circumstances**, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim.

Every letter of claim, writ, summons or process and all **Documents** relating thereto and any other written notification of claim shall be forwarded, unanswered, to the **Insurer** immediately they are received. The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.

2. Notifications

Any and all notifications of **Circumstances** and claims for an indemnity pursuant to the policy of insurance shall be notified to 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 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.

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.

2. Waiver of subrogation against employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment caused or contributed to by any act or omission of the **Employee** or former **Employee** which was caused by such a person intentionally or recklessly and with knowledge that the loss would probably result.

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 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.

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. 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.

6. 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.

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 Tokio Marine Europe S.A. Irish Branch at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

9. Reasonable steps to avoid loss

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

10. 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.

11. Assignment

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

12. 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 12 – 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 12 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 12.

13. 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**.

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.

15. 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.

Data protection notice

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

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

We may disclose your personal information to:

- our group companies;

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

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

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

You are entitled to know what data is held on you and to make what is referred to as a Data Subject Access Request ('DSAR'). You are also entitled to request that your data be

corrected in order that we hold accurate records. In certain **Circumstances**, you have other data protection rights such as that of requesting deletion, objecting to processing, restricting processing and in some cases requesting portability. Further information on your rights is included in our Privacy Notice.

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

Contact Us

Tel +44 (0)20 7702 4700
 mail@tmhcc.com
 tmhcc.com

Tokio Marine Europe S.A. Irish Branch Summit House, Embassy Office Park Kill, County Kildare W91 VK0T, Ireland Tel: +353 (0)45 886993 tmhcc.com

Tokio Marine HCC is a trading name of Tokio Marine Europe S.A., which is a member of the Tokio Marine HCC Group of Companies. Tokio Marine Europe S.A. is authorised by the Luxembourg Minister of Finance and regulated by the Commissariat aux Assurances (CAA). Registered with the "Registre de commerce et des sociétés, Luxembourg" under No. B221975 and with registered office at 26, Avenue de la Liberté, L-1930 Luxembourg. Operating through its Irish branch, registered as Tokio Marine Europe S.A. Irish branch with the Irish Companies Registration Office under the number 909016 with its registered office at Summit House, Embassy Office Park, Kill, County Kildare, W91 VK0T, Ireland. Tokio Marine Europe S.A. Irish branch is regulated by the Central Bank of Ireland for conduct of business rules

HCC 032

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 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.

HCC 591

Cyber and Data Protection Law Exclusion with write-back - General

For use with all classes other than Tech/MAC/Media/D&C

This Cyber Exclusion operates only in respect of the cover provided under Insuring Clause 1.

Save as expressly provided in this endorsement, or by other restrictions in this Policy specifically relating to the use of, or inability to use, a **Computer system**, no cover otherwise provided under this Policy shall be restricted solely due to the use of, or inability to use, a **Computer system**.

The following are added to the Exclusions:

The **Insurer** shall not be liable to indemnify the **Insured** for any claim, loss, damage, liability, costs, expense, fines, penalties, mitigation costs (whether to mitigate the **Insured's** own loss or claims against the **Insured**) or any other amount:

- 1) directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of:
 - a. a **Cyber act**; or
 - b. any partial or total unavailability or failure of any **Computer system**; or
 - c. any actual or alleged breach of **Data protection law** by the **Insured** or any other party acting on behalf of the **Insured**.

The above exclusions shall not apply to any claim for **Damages** and claimant's costs made against the **Insured** by a **Client** arising directly from a negligent act, error or omission in the ordinary course of the **Professional business**, provided that:

- i) the **Insurer** shall not be liable to indemnify the **Insured** against any claim in respect of which the **Insured** is, or but for the existence of this Policy would be, entitled to cover under any cyber or other relevant insurance; and
- ii) the **Insurer's** total liability to pay **Damages**, claimant's costs and **Defence costs and expenses** which, but for this provision would otherwise be excluded under a. to c. above, 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 and in total for all claims made during the **Period of insurance**. 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**.

2) arising directly or indirectly from

- a. any **Virus**; or
- b. any failure or interruption of service provided to the **Insured** or any other party acting on behalf of the **Insured** by an internet service provider, telecommunications provider, cloud provider or any other utility provider (such provision replaces the "Utility provider" exclusion elsewhere in the Policy); or
- c. any **Social engineering act**.

In no event shall this Policy provide indemnity for any **Insured's** own loss, damage, fine, penalty, cost or expense (other than legal costs incurred in the defence of any claim for actual or potential liability indemnified by this Policy) arising out of any event addressed in 1) or 2), including but not limited to any notification costs, crisis consultancy costs, credit monitoring expenses, cost or expense for replacement of actual credit or payment cards, forensic expenses, public relations expenses, any **Cyber extortion payment**, or any costs of reconstituting or recovering lost, inaccessible or damaged **Data**.

For the purposes of this endorsement the following definitions apply:

Client means any party with whom the **Insured** has contracted to undertake **Professional business** in consideration for a fee being paid by the **Client** to the **Insured**.

Computer system means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Cyber act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **Computer system**.

Cyber extortion payment means property, money (including digital currency or cryptocurrency) or securities transferred by or on behalf of the insured to a third party to prevent, conclude, or attempt to prevent or conclude, a **Cyber act**.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer system**.

Data protection law means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

Social engineering act means any fraudulent, malicious or dishonest instructions directed, via any form of electronic communication or telecommunication, to the **Insured**, or any party acting on the **Insured's** behalf, to transfer to any third party any funds to which such third party is not legally entitled.

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**.

All other Policy terms and conditions remain unaltered.