

Professional Indemnity

TM HCC MISC AGG (IRL) 0823 TMI
Policy Wording

DEFINITIONS

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

Circumstance

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

Computer system

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

Defence costs and expenses

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

Documents

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

Employee

Is

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

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

Excess

Is the first amount paid in respect of each claim inclusive of **Defence costs and expenses** as stated 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

Shall mean the **Insurer's** total liability to pay damages, claimant's costs, fees and expenses, **Defence costs and expenses** and shall not exceed the sum(s) stated in the Schedule in respect of any one claim or series of claims arising out of one originating cause and in total for all claims first 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**.

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

Virus

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

INSURING CLAUSES

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

1. Indemnity

for claims first made against the **Insured** during the **Period of insurance** for which the **Insured** is legally liable to pay damages (including claimant's costs and expenses) together with **Defence costs and expenses** and arising out of the ordinary course of the **Professional business**, in consequence of:-

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

2. Costs for 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 claims first made by the Insured during the Period of insurance for reasonable and necessary costs and expenses incurred with the Insurer's prior consent in prosecuting any claim for infringement of intellectual property rights first discovered during the Period of insurance where the ownership of such rights is vested in the Insured.

For the purposes of this Insuring Clause Insurers will only give prior consent where the Insured has provided, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the Insured's intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success.

3. Costs for representation

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

Costs for representation cover does not apply to Insuring Clause 2.

The Insurer's total liability under Insuring Clauses 3) 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.

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

Arising directly or indirectly out of or in connection with bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property. This exclusion shall not apply in respect of Insuring Clause 1f);

3. Land Buildings etc

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

4. Dishonesty

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

5. Contractual Liability

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

6. Products

Arising out of or relating to:

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

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

7. Insolvency/Bankruptcy of Insured

Arising out of or relating directly or indirectly to the insolvency or bankruptcy of the **Insured**;

8. Seepage and Pollution

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

9. Circumstances known at inception

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

10. Other Insurance

In respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

11. Geographical Limits

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

12. Legal action

In respect of an action for damages:

- a. brought outside the **Jurisdiction** (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 defamation as far as they are covered by the Policy;

14. Claims by Financially associated persons or entities

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

15. Retroactive Date

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

16. Radioactive contamination or explosive nuclear assemblies

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

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

17. Excess

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

18. War

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

19. Terrorism

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

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply;

20. Asbestos & Toxic Mould

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

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

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply;

21. Other Appointments

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

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

22. Trading Losses

Arising out of :

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

23. Virus

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

24. Patents

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

25. 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;

26. Claims by Employees

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

27. Medical Malpractice

arising directly or indirectly out of or in connection with:

- c) the provision of or omission to provide any medical, clinical or surgical diagnosis, advice, treatment, remedy or prescription; or
- d) 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.

NOTIFICATION AND CLAIMS CONDITIONS

1. Claim/circumstance notification

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

1.1 shall inform the **Insurer** as soon as possible, and in any event within 28 days (provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**) of the receipt, awareness or discovery of:-

- a) any claim made against them
- b) any notice of intention to make a claim against them
- c) any **Circumstance**
- d) the discovery of reasonable cause for suspicion of dishonesty or fraud.

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

- 1.1** shall not, in the event of a claim, or the discovery of information which may give rise to a claim, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of the **Insurer**; and
- 1.2** shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim.

2. Conduct of claims

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

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

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

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 brought about 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 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 EC3A 8BF.

9. 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.

10. 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.

11. 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.

Luxembourg Professional Secrecy

As a Luxembourg insurance undertaking, Tokio Marine Europe S.A. (TME) is subject to an obligation of professional secrecy under the Luxembourg Act of 7 December 2015 on the insurance sector, as amended (the "Luxembourg Act"). In this context, the Client/Policyholder acknowledges and agrees that:

- a) the **Insurer** shall be permitted to (i) outsource certain services, activities or tasks to, and (ii) rely on services provided by, external providers (including the **Insurer's** branches and group companies) that may or may not be (a) regulated or (b) located in the Grand-Duchy of Luxembourg (the "Service Providers");
- b) any information that the Client/Policyholder or an authorised representative has provided to the **Insurer** may be communicated to a Service Provider in the context of outsourcing/reliance on services. This includes information that may directly or indirectly identify the Policyholder, a beneficiary under the Policy or an authorised representative (including present and past employees, directors and officers). The types of information that may be transmitted to Service Providers include, but are not limited to, (i) contact information, such as name, address, email and telephone number; (ii) general information, such as date and place of birth, marital and family status; (iii) official identification, such as national insurance number, tax residence, tax identification number, passport number or other government issued identification number; (iv) corporate information, such as date of incorporation, registered office address, business activity, registered company number or details of shareholders; and (v) any other information relating

to the Policyholder and/or its beneficial owner and/or a beneficiary under the Policy and/or an authorised representative ("Policyholder/Client Information"); and more generally all information relating to the Client's assets and funds may be communicated to third parties to which the services have been outsourced;

- c) the transfer and /or disclosure of Policyholder/Client Information to Service Providers is in its best interest.

The list of outsourced services as well as the country of establishment of the Service Providers is available upon request.

The transfer and/or divulgence of information to external providers will take place as long as the Client maintains its insurance relationship with Tokio Marine Europe S.A.

This relates solely to the **Insurer's** professional secrecy obligations under the Luxembourg Act and is not intended to be a notice or meet any obligations under applicable data protection legislation.

Please advise us of any objections or comments within 14 days of receipt of this document. If we do not receive a response within 14 days, you shall be deemed to consent to the above clause.

For further information, please refer to the website:

<https://www.tmhcc.com/en/-/media/row/documents/legal-info/luxembourg-professional-secrecy.pdf>.

Contact Us

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mail@tmhcc.com
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