



TOKIOMARINE
HCC



Professional Risks

Professional Multi Risk Policy Wallet Insurance Documents

Insurance Documents

Notice to Insured

Here is your Policy. Please check it very carefully and ensure that it is accurate and precisely meets your requirements. If there is any error, or anything that you do not understand, please contact your broker straightaway.

All insurances contain conditions, exclusions, and in some cases warranties. It is vital that you are familiar with the obligations imposed upon you by the terms of this cover and the limitations of its scope.

Legal Helpline: +44 (0)113 251 4943

As a valued customer you have the benefit of having access to the legal helpline provided by DAC Beachcroft Solicitors. The helpline will provide you with up to 30 minutes free advice on any day to day legal issues you may have. This helpline is available during office hours, with any calls received out of hours being returned the next working day.

To be a Good Company

At Tokio Marine HCC, we are committed to supporting the needs of our employees, customers, the local community and wider society. Central to this approach is the belief that our business objectives must be strategically compatible with our behavioural, social and environmental obligations as a leading global insurer.

To ensure we meet the standards we have set for ourselves, which are now reinforced through Tokio Marine's vision of being a Good Company, we have revamped and strengthened our Corporate Social Responsibility programme around four key pillars.

Community – mutually beneficial engagement with the local and wider community;

Workplace – creation of a working environment for employees characterised by equal opportunities, training and personal development, and regular and open communication;

Environment – reduction of Tokio marine HCC's carbon footprint; and

Marketplace – commitment to treat customers fairly; monitor and confront financial crime; and comply with the Tokio Marine HCC Code of Business Conduct and Ethics

Our Rating

Tokio Marine HCC's insurance companies are highly rated

AA- (Very Strong) by Standard & Poor's

A++ (Superior) by A.M. Best Company

AA- (Very Strong) by Fitch Ratings

Our Claims Vision

The ultimate test for any insurance policy is at the time it is needed to respond to a claim and the service that your insurer provides in relation to it.

You and your brokers should take comfort in knowing that Tokio Marine HCC are committed to providing a first class level of claims service. We offer dedicated resources to ensure consistency of claims handling, effective account management and winning claims strategies. Our claims team include qualified solicitors who provide outstanding expertise and support at the time most needed.

Should you become aware of a circumstance or a claim please contact your broker or call our Professional Risks claims team on: +44 (0)20 7702 4700.

Professional Risk Capabilities

The Professional Risks division can offer you the following products:

- Professional Indemnity
- Liability Insurance
- Contractors All Risks
- Office Protect
- Management Liability
- Cyber

Complaints

We are dedicated to providing you with 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 or you have any questions or concerns about your policy or the handling of a claim you should in the first instance contact your broker or intermediary.

In the event that you remain dissatisfied and wish to make a complaint you may do so in writing or verbally by using the contact details below:

Compliance Officer
Tokio Marine HCC
1 Aldgate
London EC3N 1RE
Tel: +44 (0)20 7702 4700
Email: tmhcccomplaints@tmhcc.com

**THANK YOU FOR PLACING YOUR
BUSINESS WITH TOKIO MARINE HCC**

Professional Risks

SCHEDULE

Policy number:	PI21Z742178	Date of issue:	24/12/2021
Wording:	PMR HCCI Tech 1018		
Date of proposal form:	04/01/2016		
Insured:	Hedgehog Security Ltd previously Hedgehog Security & Hedgehog Security Limited		
Business:	IT consultants		
Start Date:	16th December 2021		
Monthly Premium:	GBP 133.25 plus Insurance Premium Tax as applicable		
Additional condition (all sections):	None		

Section 1: Professional Indemnity

Indemnity limit:	GBP 5,000,000 any one claim defence costs in addition		
Excess:	GBP 1,000 each and every claim does not apply to defence costs		
Additional conditions:	Retroactive date:	11/06/2013	
	Geographical Limits:	Worldwide	
	Jurisdiction:	Worldwide excluding USA / Canada	
	PMR 251	Rolling Policy Endorsement	

Section 2: General Liability

Indemnity limits:

Employers' liability: GBP 10,000,000 any one occurrence

If EL applies, the Limit of Indemnity shall be GBP 5,000,000 in respect of bodily injury arising from Terrorism or occurring Offshore (if applicable) or arising out of exposure to Asbestos

Public liability: GBP 5,000,000 any one occurrence

Products liability: GBP 5,000,000 any one occurrence and in all in the period of insurance

Pollution liability: GBP 5,000,000 any one occurrence and in all in the period of insurance

Excess: GBP 250 each claim in respect of Damage

Additional conditions: **Offshore Risks:** This policy does not provide coverage in respect of risks located Offshore

Applicable Courts:

A) Employers Liability: United Kingdom and Channel Islands

B,C,D) Public, Products, Pollution Liability: Worldwide excluding USA/Canada

Sanctions²

Sanctions and Embargo clause - Section 2

I-Tech

Professional Multi Risk Insurance PMR HCC I-Tech 1018

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 HCC International Insurance Company PLC.

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.

1. Policy construction and disputes

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

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

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

2. Fraudulent claims

If the **Insured** shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then

The **Insurer** will:

- i. refuse to pay the whole of the claim; and
- ii. recover from the **Insured** any sums that it has already paid in respect of the claim.

The **Insurer** may also notify the **Insured** that it will be treating (all sections of) this policy as having terminated with effect from the date of the earliest of any of the fraudulent act. In that event the **Insured** will:

- a. have no cover under the Policy from the date of termination; and
- b. not be entitled to any refund of premium.

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.

4. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by fourteen 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 HCC International Insurance Company PLC 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. Complaints

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

Compliance Officer
Tokio Marine HCC
1 Aldgate
London
EC3N 1RE

The Financial Ombudsman Service (FOS)

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

The FOS's contact details are as follows:

Financial Ombudsman Service

Exchange Tower

London E14 9SR

Email: complaint.info@financial-ombudsman.org.uk

Telephone: +44 (0)30 0123 9123

Website: www.financial-ombudsman.org.uk

The European Commission Online Dispute Resolution Platform (ODR)

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

Data Protection Notice

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

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, incident, occurrence, fact, matter, act, omission, 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 GBP 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.

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 GBP 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 GBP 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.

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 GBP 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**: GBP 250;
- b. any **Employee** of the **Insured**: GBP 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

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 advice

arising directly or indirectly from any investment, the provision of any finance or other financial advice;

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 **Compensatory 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

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**;

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.

Matters Insurable Elsewhere

27. 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;

28. 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;

29. 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;

30. 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;

31. Claims by Employees

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

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**;
 - 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 HCC International Insurance

Company PLC by either (a) email (b) telephone or (c) first class post.

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

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
HCC International Insurance Company PLC
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 Queens Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested;
- 3.2 the **Insurer** may at any time in connection with any **Claim** made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the **Claim** can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the **Claim**. For the avoidance of doubt the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made;
- 3.3 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:

- a. having **Virus** protection software operating in place which is running, correctly configured and regularly or automatically updated;
- b. having a fire wall or similar configured device to control access to its **Computer system**;
- c. encrypting and controlling the access to its **Computer system** and external devices including plug-in devices networked to its **Computer system**;
- d. controlling unauthorised access to its **Computer system** by correctly configuring its wireless network;
- e. 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;
- f. taking regular back-up copies of any data, file or programme on its **Computer system**;
- g. 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 was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission.

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;
 - 2.4 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of Part II of the Consumer Protection Act 1987 will be limited to 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 of Great Britain, Northern Ireland, the Isle of Man and the Channel Islands and not to judgments or orders 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**.

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

Section 2B - Public Liability

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

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

Section 2C - Products Liability

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

Section 2D - Pollution Liability

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

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

Conditions Applicable to Sections 2B,C and D

1. Bona fide subcontractors condition

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

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

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

and that:

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

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

2. Burning welding and cutting conditions

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

1. the immediate area in which the operation is to be carried out must be segregated to the greatest practicable extent by the use of screens made of metal and/or fire retardant material;
2. the whole of this segregated area must be adequately cleaned and freed from combustible material before operations commence;
3. if work is to be carried out overhead the area beneath must be similarly cleaned and combustible material removed;
4. combustible floors/substances in or surrounding this segregated area must be liberally covered with sand or protected by overlapping sheets of incombustible material;
5. where work is being carried out in any enclosed area an additional **Employee** of the **Insured** or an employee of the occupier shall be present at all times to guard against an outbreak of fire;
6. no work should be carried out unless specifically authorised by the occupier who should also be asked to approve the safety arrangements;
7. the following must be kept available for immediate use near the scene of operations
 - a. suitable and fully charged fire extinguishers and/or

- b. a hose connected to the nearest hydrant with water turned on and controllable at the nozzle of the hose in readiness for immediate use and tested prior to the commencement of the work;
8. a thorough examination must be made in the vicinity of the work approximately one hour after the termination of each operation. In the event that it is not practicable for such examination to be carried out by the **Insured's** own **Employee** then appropriate arrangements must be made with the occupier;
 9. before "burning off" metal work built into or projecting through walls or partitions an examination must be made to confirm that the other end of the metal is not in a hazardous proximity to combustible material which may be ignited by the conduction of heat.

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

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

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, tunnelling or quarrying;
 - d. the use of explosives for any purpose;
 - e. excavations below 3 metres in depth;
 - f. any work carried out at a height in excess of 15 metres;
 - g. ship repair/ship breaking and/or work on vessels or aircraft;
 - h. any work undertaken **Offshore**;
 - i. any manual work undertaken in the United States of America;
 - j. the operations of any incorporated entity in the United States of America or the ownership of any property or physical assets in the United States of America;
 - k. any travel to any location which is contrary to Foreign Commonwealth Office advice;
2. directly or indirectly arising from:
 - a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof but as far as concerns Section 2A this Exclusion will only apply where such legal liability is:
 - i. that of any principal;
 - ii. accepted under agreement and would not have attached in the absence of such agreement;
3. which forms the subject of insurance by any other Policy and this Policy shall not be drawn into contribution with such other insurance;

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

Exclusions Applicable to Section 2A – Employers' Liability

1. This Section does not provide any indemnity in respect of:

any liability for which compulsory motor insurance or security is required under the Road Traffic Act 1988 as amended by the Motor Vehicles (Compulsory Insurance) Regulations 1992 and the Road Traffic (Northern Ireland) Order 1981 as amended by the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1993 or any other Compulsory Road Traffic Legislation.
2. This Section does not provide indemnity in respect of:
 - a. Medical costs and expenses incurred by the **Insured** and/or any employee of the **Insured**
 - b. Repatriation costs and expenses incurred by the **Insured** and/or any employee of the **Insured** who is injured outside Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

Exclusions Applicable to Section 2B – Public Liability

This section does not provide indemnity in respect of liability:

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

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

 - a. to any **Employee**;
 - b. to third parties;
 - c. to the **Insured** under any other insurance;
 - d. in respect of loss of or damage to any vehicle of any **Employee** or third party to whom the indemnity is provided or any property conveyed therein or thereon;
2. arising out of the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft ;
3. for **Damage** to property owned, leased or hired by or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
 - a. premises (or the contents thereof) temporarily occupied by the **Insured** for work therein (but no indemnity is granted for **Damage** to that part of the property on which the **Insured** is working and which arises out of such work);
 - b. **Employees'** and visitors' clothing and personal effects including vehicles and their contents;
 - c. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement.

Exclusions Applicable to Section 2C – Products Liability

This Section does not provide indemnity in respect of liability:

1. for **Damage** to any **Product** or part thereof;
2. for costs incurred in the repair, reconditioning or replacement of any **Product** or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning or replacement;
3. arising out of the recall of any **Product** or part thereof;
4. arising out of any **Product** which with the **Insured's** knowledge is intended for incorporation into the

structure, machinery or controls of any aircraft except where specifically stated to be included in the **Professional business**;

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

Exclusions applicable to section 2D – Pollution Liability

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

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

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

These Sections do not provide indemnity in respect of liability:

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

programs or electronic data including consequential or pure financial loss;

9. arising out of work on any part of any aerodrome or airport provided for take off or landing of aircraft or the movement of aircraft or parking of aircraft including associated surface roads and ground equipment parking areas;
10. arising out of or in connection with physical, emotional or Sexual Abuse. For the purpose of this exclusion "Sexual Abuse" is defined as an action deemed to be an offence under the provisions of the Sexual Offences Act 1956 Section 1 (1) of the Indecency with Children Act 1964 Section 54 of the Criminal Law Act 1977 Section 1 of the Protection of Children Act 1978 and all Sections of the Sex Offenders Act 1997;
11. arising out of or in connection with any **Product** in the United States of America;
12. 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;
13. arising out of the provision of or omission to provide any medical clinical or surgical diagnosis advice treatment remedy or prescription;
14. directly or indirectly arising out of the failure of any **Product** to fulfil the function for which it is intended.

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

- a. by any **Employee** or the personal representatives of any **Employee** in respect of **Injury** sustained by the **Employee** arising out of and in the course of their employment by the **Insured** in the **Professional business** and caused during the **Period of insurance**; and

- b. against any company or individual operating from premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man;

provided always that:

- there is no appeal outstanding against such judgment; and
- if any payment is made under the terms of this Extension the **Employee** or the personal representatives of the **Employee** shall assign the benefits of such judgment to the **Insurer**.

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

4. 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**;

5. 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;

6. 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**;

7. Compensation for court attendance

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

- a. any director or partner of the **Insured**: GBP 250;
- b. any **Employee** of the **Insured**: GBP 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 and 4 below are conditions precedent to the **Insured's** right to be indemnified under Section 2 of this Policy.

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

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.

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.

Contact us

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

Tokio Marine HCC is a trading name of HCC International Insurance Company plc, which is a member of the Tokio Marine HCC Group of Companies. HCC International Insurance Company plc is authorised by the Prudential Regulation Authority (PRA) and regulated by the UK Financial Conduct Authority (FCA) and Prudential Regulation Authority. Registered in England and Wales No. 01575839 with registered office at 1 Aldgate, London EC3N 1RE | tmhcc.com

PMR 251

Rolling Monthly Policy Endorsement

In consideration of the agreement of the **Insured** to pay the payment of the premium for a minimum of 12 calendar months from the date of this endorsement, the **Insurer** agrees to vary the terms of this Policy as follows:

General Definitions

For the purposes of this Endorsement:

Period of insurance

Shall mean the calendar month beginning on the date stated in the Schedule (the “**starting date**”) and each succeeding calendar month in respect of which the **Insured** has made payment of the amount of premium due. In the event that the **starting date**:

- is later than the 28th day of a month then, in relation to any **Period of insurance** ending in the month of February that **Period of insurance** will end on the last day of the month;
- is on the 31st day of a month then, in relation to any **Period of insurance** ending in the months of April, June, September or November that **Period of insurance** will end on the last day of the month.

Indemnity limit

Shall have the same meaning as it has in the Policy save that, where any **Indemnity limit** is said to apply “in total for all claims first made during the **Period of insurance**” or “any one occurrence and in all in the **Period of insurance**”, the expression “**Period of insurance**” shall be deleted and shall be replaced by the following:

- the period of 12 calendar months beginning on the **starting date** and
- each successive 12 month period beginning upon any anniversary of the **starting date**.

Proposal

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

Notification and Claims Conditions Precedent

Notification and Claims Condition 1 applicable to Section 1 of this Policy shall not apply but shall be replaced by the following:

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 of:-

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

Such notice having been given as required in 1.1 a) then the claim will be deemed to be notified in the **Period of insurance** in which the claim was made against the **Insured**.

Such notice having been given as required in 1.1, b), c) or d) above then any subsequent claim made shall be deemed to have been made during the **Period of insurance** provided the notification is made by the 28th working day of the expiration of the **Period of insurance** in which 1.1 b), c) or d) (as applicable) arose;

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

General Conditions

It is hereby understood and agreed that the following shall replace the general condition headed "Cancellation".

1. Cancellation

- 1.1 This Policy may be cancelled by or on behalf of the **Insurer** by 1 calendar months' notice given to the **Insured** ending on the final day of a **Period of insurance**.
- 1.2 In the event that the **Insured** fails to make payment of the whole or any part of the premium payable on or before the day that it is due to be paid (as advised by the **Insurer**) the **Insurer** shall have the right to cancel this Policy by giving not less than 15 days prior notice to the **Insured**, via their broker, in writing. If the premium due is paid in full to the **Insurer** before the notice period expires, notice of cancellation period will automatically be revoked. If not this Policy will automatically terminate at the end of the notice period.

It is further understood and agreed that the following additional general conditions shall apply to this Policy.

2. Material changes

The **Insured** must notify the **Insurer** promptly, and in any event before the end of the **Period of insurance** immediately after that in which the relevant change occurred, of any material change to the information contained within the **Proposal**. Without prejudice to the generality of that obligation the **Insured** must notify the **Insurer** in the event that:

- 2.1 the annual turnover of the **Insured** exceeds the amount specified by the **Insurer** from time to time;
- 2.2 there is any change in the principal activity or activities of the **Insured**;
- 2.3 there is any change in the management of the **Insured**;
- 2.4 there is any change in the persons constituting the partners, members or directors of the **Insured**;
- 2.5 there is a change of name of the **Insured**;
- 2.6 the **Insured** acquires a new business as a subsidiary business (whether wholly or only partly owned by the **Insured**) to the **Insured**.

Failure of the **Insured** to comply with the duty of fair presentation, provided it is not deliberate or reckless, will entitle **Insurers**:

- a) to treat the Policy as if expired at the end of the **Period of insurance** in which the relevant event occurred and not renewed, if the **Insurer** would not have renewed the Policy; or
- b) to treat the Policy as if it had been entered into upon the terms **Insurer** would have imposed (other than on terms relating to premium) had **Insurers** been notified of all matters pursuant to the duty of fair presentation; or
- c) to reduce proportionately the amount to be paid for claims arising out of events first notified after the expiry of the **Period of insurance** when the duty arose if **Insurers** would have increased the premium had the **Insured** complied with the duty of fair presentation.

Nothing in these provisions is intended to or shall in any way be construed as varying the position under the Insurance Act 2015.

3. Effect of cancellation

In the event that this Policy is cancelled by the **Insurer** in accordance with clause 1.2 above then the indemnity provided by this Policy shall continue to be provided in respect of any claims notified to the **Insurer** prior to the date of cancellation provided the **Insured** has paid all the premium due to that date.

4. Variation of terms

The **Insurer** may regard it as necessary to change the premium, **Excess** or other terms and conditions of this Policy. The **Insurer** may, at their absolute discretion, vary the premium, **Excess** or other terms and conditions of this Policy at any time but only upon giving the **Insured** one calendar month's written notice. Unless the **Insured** serves a counter-notice to terminate it the terms and conditions of this Policy will be deemed to have been varied with effect from the expiry of that notice period.

5. Premium Payment Clause

General Conditions 8, Premium Payment Clause, is deleted.

All other terms and conditions of this Policy remain unaltered.

Sanctions and Embargo clause (Applicable to Section 2)

The **Insurer** shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Japan, United Kingdom or United States of America.

All other terms and conditions of this Policy remain unaltered.