

Professional Indemnity Insurance

Policy Wording



Qdos | **Business insurance.** *It's our thing.*

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In this document, you'll find all the information about this policy including what it covers, what's excluded, and your responsibilities as the 'Insured'.

Please refer to your Policy Schedule for the specifics of your policy, including policy limits, sums insured, period of insurance, and excess.

Good to know

This insurance policy has been arranged by Qdos Contractor and is underwritten by HCC International Insurance Co PLC.

Please check your documents carefully to ensure you understand the limitations of your cover and that this policy meets your requirements.

If you notice any error or need further clarification, please contact your Qdos Account Manager or our customer services team.

Need to make a claim?

If you need to make a claim, contact us via phone or email using the following details:

Telephone: 0116 478 3419

Email: claims@qdoscontractor.com

Notify Qdos as soon as possible and within 28 days of a claim or circumstance which could give rise to a claim.

This is a claims made policy. Claims must be notified and received by **Qdos** during the **Period of Insurance**.

Qdos Contractor is a trading name of Qdos Broker & Underwriting Services Limited, authorised and regulated by the Financial Conduct Authority.

HCC International Insurance Co PLC is registered in England and Wales No. 01575839 Registered office at 1 Aldgate, London, England EC3N 1RE. HCC International Insurance Co PLC is authorised and regulated by the Prudential Regulation Authority and is regulated by the Financial Conduct Authority. This can be checked on the Financial Services Register at www.fca.org.uk/register or by contacting them on 0800 111 6768.

Understanding your policy

Use the following definitions to fully understand your Policy Wording. Where a word or term in this Policy Wording appears in bold, it should be interpreted as follows:

Circumstance

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

Computer system

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

Damages

Shall mean monetary relief.

Defence costs and expenses

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

Documents

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

Employee

is:

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

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

Excess

Is the first amount paid in respect of each claim as stated in the Schedule. The **Excess** is not payable in respect of **Defence costs and expenses**. The **Indemnity limit** is additional to the **Excess**.

Financially associated person or entity

shall mean:

- a. any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest;
- b. any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital;
- c. any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director (as defined in s.251 of the Insolvency Act 1986) of the **Insured**;
- d. any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**.

Indemnity limit

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

Insured

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

Insurer

Means HCC International Insurance Company PLC.

Jurisdiction

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

Period of insurance

Is that as stated in the Schedule.

Personal appointment

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

Professional business

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

Qdos

Qdos Broker & Underwriting Services Limited trading as Qdos Contractor, who administers and manages this insurance on behalf of the **Insurer**.

Virus

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

Insuring Clauses

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

1. Indemnity

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

- a) Breach of professional duty;
- b) Breach of an express or implied contractual duty to exercise reasonable skill and care;
- c) Dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given under this Policy in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;
- d) Libel, slander or defamation;
- e) Unintentional breach of confidentiality or other invasion, misuse of private information, infringement or interference with rights of privacy or publicity including false light and the public disclosure of private facts including misuse of any information which is either confidential or subject to statutory restrictions;
- f) Unintentional infringement of intellectual property rights except patents;
- g) The loss of or damage to **Documents**;
- h) Any other civil liability not otherwise excluded.

2. Legal defence costs and expenses

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

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

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

Up to a maximum of 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.

4. Costs for representation

Up to a maximum of GBP 250,000 in the aggregate in the **Period of Insurance**, for the reasonable and necessary legal costs incurred by the **Insured** with the **Insurer's** prior written consent for representation at any inquiry or other proceeding which has, in the **Insurer's** sole opinion, a direct relevance to any claim, **Circumstance** or event which could form the subject of indemnity under this Policy. For the avoidance of doubt:

- a) Costs for Representation cover does not apply to Insuring Clause 3
- b) The **Insurer** shall have no liability to pay for the **Insured's** own costs and expenses.

5. Irrecoverable fees

Up to the **Indemnity limit** for amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a claim for more than the amount owed, and which would otherwise be covered under Insuring Clause 1, provided that such threat is first made against the **Insured** and notified to **Insurers** during the **Period of insurance**. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the amount owed if they consider that it will avoid a legitimate claim under Insuring Clause 1 for a greater amount.

If, following this, a claim under Insuring Clause 1 still arises then the amount paid under this section will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers part or all of the debt then such recovered amount shall be repaid to the **Insurer** less the **Insured's** reasonable expenses of recovering the debt due.

6. Data protection defence costs

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

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

7. Indemnity to Principals

If the **Insured** so requests, **Insurers** 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 services performed by the **Insured** and subject always to the terms and conditions of this Policy.

8. Reputation management

Up to a maximum of GBP 50,000 in the aggregate in the **Period of insurance**, following a claim under Insuring Clause 1 for all reasonable and necessary costs incurred with the **Insurer's** 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.

9. Court attendance

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

- a) Any principal, partner, member or director of the **Insured**: GBP 250;
- b) Any **Employee**: GBP 100

10. Mitigation of loss

For additional expenses directly incurred, with the prior written consent of the **Insurer**, in successfully rectifying a problem which otherwise would lead to a claim in excess of such expenses under Insuring Clause 1 of this Policy.

If the **Insured** is unable to get approval from the **Insurer** due to time constraints or lack of detailed information, the **Insurer** will pay such expenses provided that the **Insured** can demonstrate that:

- a) such expenses were less than the amount of a potential claim; and
- b) the amount is reasonable; and
- c) the **Insured's** client has received the same level and quality of service or deliverables that they were originally entitled to receive.

Any payment made under this Clause will exclude the **Insured's** lost profit, mark-up, own management costs, wages or VAT or its equivalent and compensation for management time or any lost files or commissions from any other client or potential client. If a claim is later made the amount of expenses paid under this section will be deducted from the **Indemnity limit** for that claim.

For the avoidance of doubt the indemnity provided under Insuring Clauses 3), 4), 6), 7), 8), and 9) is not additional to and shall not increase the **Indemnity limit**.

Extensions

1. Sub-contractors

Where the **Insured** has engaged a third party under a written contract to provide services under the **Insured's** supervision, the **Insurer** will indemnify the **Insured** for any claim brought as a result of the subcontractor's 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.

2. Mergers and acquisitions

- a) If, during the **Period of insurance** the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to all such created or acquired companies does not exceed 10% of the estimated turnover of the companies covered under this Policy at inception (less the turnover for companies sold during the **Period of insurance**), then this policy shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition without additional premium provided that:
- i. **Professional business** services carried out by such company is similar to that of the **Insured**; and
 - ii. Prior to the acquisition the acquired company's directors or officers shall not have notified or be aware of any professional indemnity claims or **circumstances**; and
 - iii. the retroactive date applicable to the **Professional business** services of the new entity is deemed to be the date of acquisition;
- b) Where the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to

all such created or acquired companies exceeds 10% of the estimated turnover of the companies covered under this Policy at inception (less the turnover for companies sold during the **Period of insurance**), then this Policy shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition provided that:

- i. the terms stated in 3a) i) to iii) above also apply to such created or acquired companies;
- ii. the **Insured** notifies the **Insurer** as soon as is reasonably practicable of the creation or acquisition;
- iii. the **Insured** accepts the revised premium and or terms applying to each and every such creation and or acquisition;
- iv. all cover in respect of such created or acquired entities will terminate 30 days following creation or acquisition if terms cannot be agreed between the **Insured** and the **Insurer**.

What isn't covered

The Insurer shall not be liable to indemnify the Insured against any claim:

1. Employers liability

Arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal, director, member or **Employee** or applicant for employment;

2. Bodily injury/property damage

For bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such arises directly from negligent advice, design, specification, formula or other breach of professional duty by the **Insured**;

3. Land buildings etc.

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

4. Dishonesty

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

5. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party but only to the extent that such duty is more onerous than any

duty that would otherwise be implied by common law or statute;

6. Products

Arising out of or relating to:

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

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

7. Insolvency/bankruptcy of Insured

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

8. Seepage and pollution

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

9. Claims or Circumstances known at inception

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

10. Other insurance

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

11. Geographical limits

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

12. Legal action

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

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

13. Fines and penalties

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

14. Claims by financially associated persons or entities

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

15. Retroactive date

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

16. Radioactive contamination or explosive nuclear assemblies

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

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

17. Excess

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

18. War

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

19. Terrorism

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

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

20. Asbestos

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

21. Other appointments

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

- a. director or officer of the **Insured** or of any other company or arising out of the

management of the **Insured** or of any other company; or

- b. trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise;

22. Trading losses

Arising out of:

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

23. Virus

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

24. Patents

Arising directly or indirectly from the infringement of any patent;

25. Obscenity

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

26. Libel, slander or defamation

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

27. Restricted Recovery Rights

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

28. Contractual Remedies

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

29. Financial Advice

Arising directly or indirectly from the provision by the **Insured** of any investment or financial advice or arrangements made by or on behalf of the **Insured** in respect of any finance, credit or leasing agreement;

30. Employee benefit schemes/stocks and shares

arising directly or indirectly from the operation or administration of any pension or other employee benefit scheme or trust fund, or the sale or purchase or dealing in any stocks, shares or securities or the misuse of any information relating to them or the breach of any related legislation or regulation;

31. Taxation, competition, restraint of trade

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

32. Official action or investigation

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

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

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

34. Deliberate acts

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

35. Utility provider

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

36. Costs and expenses incurred without prior consent

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

37. Claims by Employees

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

Making a claim

1. Claim/Circumstance Notification

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

1.1. shall inform **Qdos**, in writing, as soon as possible, and in any event within 28 days of the receipt, awareness, or discovery during the **Period of insurance** of:-

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

provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance**, or if the **Insured** renews this policy with the **Insurer**, within 7 days after its expiry.

Such notice having been given as required in b), c) or d) above, any subsequent claim 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.

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 **Qdos** 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 **claims@qdoscontractor.com**

If by telephone, please dial the following number:

Telephone: 0116 478 3419

If by post:
PI Claims
Qdos Contractor
The Grange
Grange Avenue
Rearsby
Leicester
LE7 4FY

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.

General Conditions

1. Policy construction and disputes

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. 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.

3. Dishonest or fraudulent act or omission

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

4. Fraudulent Claims

If the **Insured** shall 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.

5. Contracts (Rights of Third Parties) Act 1999

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

6. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by fourteen days notice given in writing to the **Insured**.

7. Invalidity

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

8. Notices

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

- a) In the case of the **Insured**, the **Insured's** last known address.
- b) In the case of the **Insurer**, to HCC International Insurance Company PLC at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.
- c) In the case of **Qdos**, to Qdos Contractor at The Grange, Grange Avenue, Rearsby, Leicester, LE7 4FY

9. Reasonable steps to avoid loss

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

10. International Sanctions

The **Insurer** will not provide cover, be liable to pay any claim or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations which are applicable to it.

11. Assignment

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

12. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 12 – Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this policy of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 12 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 12.

Complaints

In the event that you are dissatisfied with any aspect of this Policy or the service provided by Qdos, please write to:

Email
feedback@qdoscontractor.com
Telephone
0116 269 0999

Post
The Nominated Complaints Handler
Qdos Contractor
The Grange
Grange Avenue
Rearsby
Leicester
LE7 4FY

If it is not possible to reach an agreement, you have the right to make an appeal to the Financial Ombudsman Service. This also applies if you are insured in a business capacity and have an annual turnover of less than €2 million and fewer than ten staff. You may contact the Financial Ombudsman Service at:

Post
The Financial Ombudsman Service
Exchange Tower
Harbour Exchange Square
London
E14 9SR

Telephone
0845 080 1800
Email
complaint.info@financial-ombudsman.org.uk
Website
www.financial-ombudsman.org.uk

The above complaints procedure is in addition to your statutory rights as a consumer. For further information about your statutory rights contact your local authority Trading Standards Service or Citizens Advice Bureau.

Compensation Scheme

HCC International Insurance Co PLC is covered by the Financial Services Compensation Scheme (FSCS). If they are unable to meet their obligations, **you** may be entitled to compensation from the scheme, depending on the type of insurance and the circumstances of the claim. Further information is available from the FSCS at www.fscs.org.uk or by contacting them

**10th Floor
Beaufort House
15 St Botolph Street
London EC3A 7QU**

or by telephone on **0800 678 1100**.

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 (please note that reference to “you” or “your” herein encompasses non-exhaustively “you, your company, employees and/or customers”).

We may disclose your personal information to:

- a) our **group companies**;
- b) **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;
- c) 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;
- d) 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 Policy; or
- e) 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 Policy.

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.

Qdos

www.qdoscontractor.com