

Policy



**CNA**

# Professional Indemnity for Broadcasters

## Aggregate – Policy

### Contents

	<i>Page</i>
1. Insuring Clause	2
2. Limit of Indemnity, Sub Limits, Excess and Defence Costs and Expenses	5
3A. Exclusions Specific to this Policy	6
3B. General Exclusion	8
4. Definitions	10
5. Conditions Precedent	14
6. General Terms and Conditions	15
Disputes and Complaints	18

# Professional Indemnity for Broadcasters

## Aggregate – Policy

As consideration for the **Insured** paying the **Premium** stated in the **Schedule** to the **Insurer** and on the basis of the signed **Proposal** containing particulars and statements together with all other information submitted by the **Insured** to the **Insurer** all the terms of which shall be incorporated into this **Policy**

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### 1. Insuring Clause

#### Insuring Clause 1A

1. The **Insurer** agrees to indemnify the **Insured** up to but not exceeding the **Limit of Indemnity** in the annual aggregate stated in the **Schedule** in respect of a **Claim** first made against the **Insured** in connection with the provision of **Business Services** and notified during the **Period of Insurance** arising out of:
  - a. negligent error act or omission or breach of duty of care;
  - b. unintentional breach of a written contract for the provision of **Business Services** by the **Insured**;
  - c. negligent misstatement or misrepresentation;
  - d. unintentional libel slander and/or defamation;
  - e. unintentional breach of or misuse of confidentiality or any right to privacy;
  - f. unintentional infringement of intellectual property rights, whether
    - (i) from the provision of **Business Services** or
    - (ii) from the advertising and / or marketing of **Business Services**, and including any act of passing-off, music rights, performance rights, broadcasting cable or satellite rights, performer or author moral rights;
  - g. product disparagement or breach of any comparative advertising regulations;
  - h. any other civil liability (not otherwise excluded under this **Policy**).
2. The **Insurer** agrees
  - a. to indemnify **Defence Costs and Expenses** incurred by the **Insured** in connection with a **Claim** arising under Insuring Clauses 1a. to 1h. and
  - b. the **Limit of Indemnity** shall include **Defence Costs and Expenses**.
3. The **Insurer** agrees to indemnify the **Insured** in respect of a **Claim** for loss and/or damage to **Documents** provided said loss and/or damage is notified to the **Insurer** during the **Period of Insurance** and the consent of the **Insurer** is obtained for incurring the cost of replacing or restoring said **Document**:
  - a. up to a maximum sub limit of £250,000; each **Claim** and in the annual aggregate and
  - b. subject to an **Excess** of £1,000 each and every **Claim** for said loss of and/or damage to **Documents** except that the **Insurer** will not pay for any loss and / or damage brought about or contributed to by any dishonest or fraudulent acts of the **Insured**.

4. The **Insurer** agrees to indemnify the **Insured** up to but not exceeding the **Limit of Indemnity** in the annual aggregate stated in the **Schedule** in respect of a **Claim**:
- a. for financial loss arising out of any dishonest or fraudulent act or omission on the part of any **Employee** but said financial loss shall not include any consequential or trading loss whether financial or otherwise, or any business interruption loss whether financial or otherwise arising out of any dishonest or fraudulent act or omission on the part of any **Employee**;
  - b. where said financial loss is discovered by the **Insured** and notified to the **Insurer** during the **Period of Insurance** and
  - c. the **Insured** shall take all reasonable steps at their own expense to effect recovery from the person committing or condoning such dishonest or fraudulent act or omission or from any legal representatives of such person except that such financial loss arising from any **Insured** participating in or condoning such dishonest or fraudulent act or omission shall result in forfeiture by the **Insured** of any entitlement to any indemnity under this **Policy**; always provided that:
  - d. the following shall be deducted before any payment is made under section 1.4 of this Policy:
    - i. any monies owed by the **Insured** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission;
    - ii. any monies held by the **Insured** and belonging to such person; and
    - iii. any monies recovered following action as described in 1. 4 c above.
  - e. The **Insurer** shall not be liable under this **Policy** to indemnify any such financial loss happening after discovery by the **Insured** of any dishonest or fraudulent act or omission committed by any person (or after any such financial loss which the **Insured** ought reasonably to have discovered) or after any discovery by the **Insured** giving reasonable cause for the **Insured** to suspect commission of said dishonesty, fraud or omission by any person.

## Insuring Clause 1 B

1. The **Insurer** agrees to indemnify **Defence Costs and Expenses** up to but not exceeding the **Limit of Indemnity** in the annual aggregate stated in the **Schedule** incurred by the **Insured** during the **Period of Insurance** in connection with:
  - A. the defence of a complaint made about the content of any material to the Press Complaints Commission, Office of Communications, or the Advertising Standards Authority;  
and / or
  - B. the defence of an allegation of contempt of court made against the **Insured** (and notwithstanding any exclusion insofar as it applies to criminal matters)  
or
  - C.
    - (i) defending or challenging any legal proceedings, including a subpoena relating to a source used in a publication by the **Insured** and where said legal proceedings are served on the **Insured**, and
    - (ii) said proceedings require the attendance of an **Insured** at a court or tribunal in the United Kingdom;  
and / or
    - (iii) the **Insured** is required to produce documentation and / or material published by the **Insured** or otherwise used in the course of providing **Business Services**, by the **Insured** to said court or tribunal.
2. The **Insurer** agrees to indemnify **Defence Costs and Expenses** up to a maximum annual aggregate sub limit of £500,000 as stated in the **Schedule** for the investigation and / or defence of the **Insured** in investigatory proceedings where said proceedings are by a public, government or regulatory body or authority.  
Always provided however as regards both sections 1 B 1. and 1 B 2. above that in the sole opinion of the **Insurer** there is a reasonable prospect in law of defending or challenging the role of the **Insured** in said legal, complaint or investigatory proceedings and further that any payment of said **Defence Costs and Expenses** (including the maximum annual aggregate sub limit in 1 B 2. above) shall be included in any **Limit of Indemnity** in the annual aggregate applying as stated in the **Schedule** to any **Claim** arising out of the same matters that are the subject of such defence, challenge or investigation as outlined above.

## 2. Limit of Indemnity, Sub Limits, Excess and Defence Costs and Expenses

- a. The **Limit of Indemnity** (and any sub limits as applicable) under this **Policy** in respect of any one **Claim** and in the annual aggregate shall be the amount specified in the **Schedule** and
- b. **Defence Costs and Expenses** shall be included in the **Limit of Indemnity**.
- c. The **Excess** shall be the amount specified in the **Schedule** and shall be applied to and paid first by the **Insured** to any **Claim** and the **Limit of Indemnity** shall be in addition to the **Excess**.
- d. For the purposes of this **Policy** and including the application of any **Excess** or **Limit of Indemnity** as above, any **Interrelated Claims** made against the **Insured** and notified to the **Insurer** within the **Period of Insurance** shall be deemed to be one **Claim**, first made and notified to the **Insurer** on the date on which the earliest notification of the **Interrelated Claims** was made and the **Excess** and **Limit of Indemnity** provisions of this **Policy** as outlined above shall operate accordingly.
- e. The obligations of each insurer and Lloyd's syndicate (including the underwriters thereof) subscribing to this **Policy** shall be several and not joint and shall be solely to the extent of that insurer or syndicate individual subscription. No insurer or syndicate shall be responsible for the subscription of any other such insurer or syndicate who for any reason has not satisfied all or part of its obligations hereunder.

### 3A. Exclusions Specific to this Policy

The **Insurer** shall not be liable to indemnify or make any payment under this **Policy** for any **Claim** directly or indirectly based on or arising out of or in any way involving:

#### 1. **Joint Ventures**

Any **Joint Venture** except that this exclusion shall not apply to any **Claim** made against the **Insured** which emanates solely from a third party unconnected with said **Joint Venture** and arising out of the provision of **Business Services** by the **Insured** and as per Insuring Clause 1 a. to h.

#### 2. **Contract or Contract Terms Imposing Greater Liability or Obligations**

Any liability assumed by the **Insured** pursuant to a contract or any contract term for the provision of **Business Services**, to the extent that said contract or contract term imposes any greater liability or obligation on the **Insured**, or said liability or obligation is beyond the obligations of reasonable skill and care, or impose a greater financial liability or obligation for any **Claim** covered under this **Policy** than would otherwise be the case in law.

#### 3. **Game Lottery Contest Promotions**

Any liability connected to the outcome of any game, lottery, contest or promotion.

#### 4. **Damage Loss or Destruction of Film Negatives Print Tapes Images**

Any damage, loss or destruction of film, negatives, print or sound tapes, video tapes or media images stored in a media stocked library.

#### 5. **Computer Failure or Virus**

Any **Claim** or liability from any failure or efficacy of any programme, instruction or data for use in any computer or any **Virus**.

#### 6. **Liability from Goods, Products or Services.**

Any liability from the construction, supply, manufacture, sale, installation, repair, alteration or maintenance of goods, products or services by or on behalf of the **Insured** unless arising out of the provision of or failure to provide **Business Services** to the legally required standard of care diligence and expertise and as per Insuring Clause 1 A 1. a.

#### 7. **Fines Penalties Exemplary Punitive Additional Damages**

Any fines, penalties, exemplary or punitive damages or additional damages that may be awarded including as per section 97 (2) of the Copyright, Designs and Patent Act 1988.

#### 8. **Failure to Follow Legal Advice**

Any failure or omission by the **Insured** to follow legal advice received prior to broadcast, as regards the content of any broadcast.

#### 9. **Deliberate Defamation**

Any liability from a broadcast or publicised statement or content that is or was likely to lead to a **Claim** for defamation and at the time of broadcast and / or publication of said statement or content, the **Insured** did not reasonably believe that there was a proper defence to any defamation action that might be brought as a result of said statement or content.

#### 10. **Stunt Activities**

Any stunt or other similar activity in connection with any broadcast, advertising, educational or promotional material.

**11. Construction and / or Erection Work**

Any construction or erection work unless such work has been sub contracted to a specialist **Sub Contractor** and said **Sub Contractor** has obtained and maintains adequate professional indemnity insurance covering said construction and / or erection work with a reputable insurer.

**12. Mimicry**

Any liability from broadcasting, advertising or promotional material that uses mimicry.

**13. Broadcasting Advertising and /or Products Harmful to Health**

Any broadcast or advertising material that adversely affects health or lifestyles of others and / or in connection with any product that contains tobacco or nicotine, alcohol, pharmaceutical products or anything which is or becomes defective or dangerous or harmful to health in any way.

**14. Obscene or Blasphemous Content**

Any liability from any broadcast content which is or could be regarded as obscene or blasphemous.

**15. Mailing Lists**

Any liability in connection with mailing lists unless prior agreement as to the accurate specification of the mailing list was obtained in writing by the **Insured** from the **Client** and the **Insured** uses adequate internal checking procedures to ensure that errors and /or omissions are detected and that the correct mailing list is being used before being disseminated .

**16. Breach of Competition, Restraint of Trade Legislation**

Any liability from breach of any taxation, competition, restraint of trade or anti trust legislation and / or regulation.

### 3B. General Exclusion

The **Insurer** shall not be liable to indemnify or make any payment under this **Policy** for any **Claim** directly or indirectly based on or arising out of or in any way involving:

#### 1. Bodily Injury

Bodily injury, sickness, disease, emotional distress, mental anguish mental stress or the death of any person unless arising out of the provision of **Business Services** by the **Insured** and as per Insuring Clause 1 A 1.a.

#### 2. Property Damage

Damage to or destruction of any **Property** (including **Documents** other than as provided by Insuring Clause 1 A 3.) and including loss of use unless arising out of the provision of **Business Services** by the **Insured** and as per Insuring Clause 1 A 1. a.

#### 3. Obligations to Employees

Any breach of any obligation owed by the **Insured** as an employer to any **Employee** or any applicant for employment.

#### 4. Prior Knowledge

Any **Circumstance** which was known to the **Insured** prior to the inception of this **Policy** and which the **Insured** at such time knew or should reasonably have known might give rise to a **Claim** against the **Insured**.

#### 5. Warranty or Guarantee

Any warranty, express guarantee, penalty clause, additional or liquidated damages unless the liability of the **Insured** would have existed to the same extent in the absence of such warranty, guarantee, penalty clause, additional or liquidated damages clause.

#### 6. Claims by Insured

Any **Claim** brought by or on behalf of any **Insured**, or any parent or subsidiary company of the **Insured** named in the **Schedule**, or any person or entity having a financial, executive or controlling interest in such **Insured**, or any entity where the **Insured** has accepted any financial interest, in place of fees otherwise incurred unless any such **Claim** is brought directly against the **Insured** by a third party independent of any other **Insured**.

#### 7. Other Insurance

Any loss or any indemnity sought under this **Policy** resulting from any **Claim**, insured under any other insurance, then this **Policy** shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the **Limit of Indemnity** provided by this **Policy**. Further this **Policy** shall be specifically be excess of any other valid and collectible insurance pursuant to which any other **Insurer** has a duty to defend any **Claim** or part of any **Claim** for which this **Policy** may be obligated to pay any indemnity.

#### 8. War and Insurrection:

- a. War (whether declared or not) invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or civilian agents, or any action taken by any government, sovereign or other authority to hinder or defend against an actual or expected attack;
- b. Insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;

- c. Discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;
- d. **Terrorist Action** (regardless of any other cause or event contributing or in any other sequence to the liability) or any action taken in controlling, preventing, or suppressing **Terrorist Action**.

**9. Retroactive Date**

Any act error or omission committed prior to the Retroactive Date as specified in the **Schedule**.

**10. Status as Director/Member**

Any liability as a **Director**, **Member**, officer and/or trustee.

**11. Use of Aircraft/Watercraft/Motor Vehicles**

Ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land (or that part thereof leased, occupied or rented) by the **Insured** or any **Property** (mobile or immobile) of the **Insured** or in which the **Insured** has an interest .

**12. Bankruptcy**

Any insolvency or bankruptcy of the **Insured** or the insolvency or bankruptcy of any **Partner** , **Principal** or **Director** of the **Insured**.

**13. Trading/Investment Losses**

- a. Any trading losses or trading liabilities of the **Insured** including but not limited to any loss of or shortfall in a **Client** account; and /or
- b. the depreciation, failure to appreciate or loss of any investments and/or **Property** for investment purposes when such depreciation, failure to appreciate or loss is a result of normal or abnormal fluctuations in any financial, stock or commodity or other markets which are outside the influence or control of the **Insured**.

**14. Malicious Falsehood or Statements**

Any **Claim** under Insuring Clause 1 d. for libel slander or any defamation involving

- a. malicious falsehood or statements published by the **Insured** with no honest belief in their truth; or
- b. malice on the part of the **Insured** which deprives the **Insured** of the benefit of a defence to a **Claim**.

**15. Agreement to Finance**

Any agreement to provide, manage or introduce finance to or for any party.

**16. Failure to Maintain Insurance**

Any alleged failure on the part of the **Insured** to maintain or advise upon insurance cover.

## 4. Definitions

### 1. Business Services

means the broadcasting business services and activities of the **Insured** as declared in the **Proposal** and in any other information submitted by the **Insured** to the **Insurer** for this **Policy**.

### 2. Circumstance

means any circumstance, including any potentially defamatory content in any broadcast, which may give rise to a **Claim** against the **Insured** (or against a **Sub Contractor**) or any circumstance which the **Insured** (or a **Sub Contractor**) becomes aware of or should reasonably have become aware of which may give rise to a **Claim** against the **Insured** (or a **Sub Contractor**).

### 3. Claim

means any demand made on or assertion of any right by a third party against the **Insured** (or against a **Sub Contractor** provided always however that said **Sub Contractor** has immediately notified the **Insured** of any such **Claim** as per all notification provisions set out in this **Policy**) for financial compensation for loss and shall include a **Claim** for damages if otherwise covered by the **Policy**.

**Claim** shall not include financial or any other loss incurred as a result of any criminal proceedings (other than as covered in Insuring Clause 1 A 4. & 1 B 1.) or any disciplinary investigations or proceedings (other than as covered under Insuring Clause 1B 1. & 2.) fines, prosecution costs, penalties, forfeitures or any penal, punitive, exemplary, multiplied, additional or aggravated damages .

### 4. Client

means any person firm or corporation with whom or which the **Insured** has a written contract for the provision of **Business Services**.

### 5. Defence Costs and Expenses

means legal fees and legal expenses incurred in the investigation, challenge, and/or defence of any **Claim** or **Circumstance** by or on behalf of the **Insured** with the prior written consent of the **Insurer**. It shall not include any other costs, expenses, salaries and / or business expenses of the **Insured**. **Defence Costs and Expenses** shall not include legal costs in any way connected to injunctions or restraining orders unless arising solely out of the provision of **Business Services** by the **Insured** and otherwise covered under the provisions of Insuring Clause 1 A 1 and / or 1 B 1. & 2 .

### 6. Director

means a **Director** of the **Insured** where the **Insured** is a limited company incorporated under the Companies Acts 1948 to 2006.

### 7. Document

means any document, digital data, microcode or information used in the provision of **Business Services** by the **Insured** including printed, manuscript, or electronic documents, photographs or film or footage obtained or stored for the purpose of journalism and the broadcasting **Business Services** of the **Insured**, or whether kept in paper (excluding stamps, currency, coins, bank notes and bullion, travellers cheques,

cheques, postal orders, money orders, securities and the like), or stored magnetically or in electronic form, on a hard drive or portable media, belonging to the **Insured** or for which the **Insured** is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the provision of **Business Services** and which have been unintentionally destroyed, damaged, lost or mislaid (and which after diligent search cannot be found).

#### 8. **Employee**

shall mean any natural person, other than a **Partner, Principal, Member** or **Director** of the **Insured** named in the **Schedule**, who is / was under a contract of service or apprenticeship, supplied to, hired, or borrowed by such **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control and / or direction of any **Insured** in connection with the provision of **Business Services** .

#### 9. **Excess**

means the amount stated in the **Schedule** which shall be applied first to any **Claim** and paid first by the **Insured**.

#### 10. **Insured**

means the entity named in the **Schedule** or any former entity if declared in the **Proposal** supplied to the Insurer and with respect to any **Claim**, the **Principal, Members, Partners, Directors** and **Employees** of that entity or said former entity.

#### 11. **Insurer**

means CNA Insurance Company Limited and any other insurance companies and/or Lloyd's syndicates subscribing to this **Policy**.

#### 12. **Interrelated Claims**

means any **Claim** based on any acts, errors and omissions that have a common cause or origin and / or are connected by reason of any common fact, **Circumstance**, situation, transaction or event.

#### 13. **Joint Venture**

means either a partnership recognised by law or other arrangement whether recorded in writing or not and regardless of what name is given to the arrangement whereby the **Insured** shares profits and/or fees and/or costs and/or losses with any other party.

#### 14. **Limit of Indemnity**

means the sum specified in the **Schedule**.

#### 15. **Member**

means a **Member** of the **Insured** where the **Insured** is a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

#### 16. **Partner**

means a partner of the **Insured** where the **Insured** is a partnership formed under the Partnership Act 1890.

#### 17. **Period of Insurance**

means the period stated in the **Schedule**.

#### 18. **Policy**

means this document, the **Schedule** and any endorsements thereon.

#### 19. **Premium**

means the amount stated in the **Schedule**.

#### 20. **Principal**

means the **Principal** of the **Insured** where the **Insured** is a sole practitioner.

## 21. Property

means:

- a. Currency, coins and bank notes in current use and having a face value;
- b. Travellers cheques, register cheques and money orders held for sale to the public;
- c. negotiable and non-negotiable instruments or contracts representing either money or other **Property** including tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use;
- d. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**; and / or
- e. any tangible property that has intrinsic value.

## 22. Property Damage

means damage to or loss or destruction of **Property** or loss of use thereof.

## 23. Proposal

means the written **Proposal** bearing the date stated in the **Schedule** and containing particulars and statements together with any other information supplied to the **Insurer**.

## 24. Schedule

means the **Schedule** attached to this **Policy** and for the time being in force on this **Policy** .

## 25. Sub Contractor

means purchasers and distributors, whether being a person or an entity, contracted to provide **Business Services** to the **Insured** or to a **Client** of the **Insured** pursuant to a written contract between the **Insured** and the **Sub Contractor**.

## 26. Territory

means the territories stated in the **Schedule** attached to this **Policy**

## 27. Terrorist Action

means any actual or threatened:

1. action falling within Section 1 subsection (2) of the Terrorism Act 2006 or as amended by subsequent legislation; or
2. use of force or violence against persons or **Property**; or
3. commission of an act dangerous to human life or **Property**; or
4. commission of an act that interferes with or disrupts an electronic or communications system including a denial of service attack or action

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when any of the following applies:

- a. the reasonably apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy; or
- b. the reasonably apparent intent or effect is to cause alarm, fright, fear of danger, or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments; or
- c. the reasonably apparent intent or effect is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

## 28. Virus

means any unauthorised executable code that replicates itself through a computer system or network whether termed a **Virus**, logic bomb, worm, Trojan horse or known by any other name intended to corrupt manipulate or erase computer records or damage computer hardware.

## 5. Conditions Precedent

The following shall be conditions precedent to liability of the **Insurer** under this **Policy** namely that

### 1. Notification of Claim

The **Insured** shall give the **Insurer** notice in writing within 14 working days of receipt by the **Insured** of any notice or intention to assert a **Claim** (including notification made by a **Sub Contractor** to the **Insured** of a **Circumstance**, or of any notice or intention to assert a **Claim**) within 14 working days of the discovery, receipt or allegation of any **Claim** and the **Insured** shall within 14 working days forward all letters written pursuant to any pre-litigation protocol, Claim Forms and court proceedings to the **Insurer** and provide full details concerning any **Claim**. The **Insured** must provide such cooperation and assistance as the **Insurer** and its representatives, legal advisers or agents may reasonably require. The insurance agent or broker of the **Insured** is not the agent of the **Insurer** for the purposes of receipt of notification as above;

### 2. Subrogation

The **Insured** shall provide such assistance as the **Insurer** may reasonably require in any subrogation proceedings and shall take all steps necessary to preserve the rights of subrogation of the **Insurer** and in particular the **Insured** shall not enter into any arrangement or agreement contractual or otherwise limiting or restricting in any way any rights of recovery of the **Insurer** (and the above shall apply to any **Sub Contractor** seeking an indemnity through the **Insured** and / or being granted any indemnity by the **Insurer** under this

**Policy**). The **Insurer** shall be subrogated to all rights of recovery of the **Insured** against any third party, whether before or after any indemnity is given under this **Policy**, provided always that the **Insurer** shall not exercise any such rights against any **Employee** unless the loss in respect of which indemnity is provided under this **Policy** was caused or contributed to by any fraudulent, dishonest or malicious act or omission by the **Employee**;

### 3. Correction of Problem caused by Business Services

Notification of a **Claim** or **Circumstance** by the **Insured** to the **Insurer** which may or may not be otherwise covered under this **Policy** shall not affect or alter any continuing obligation on the **Insured** to take all reasonable steps to correct any problem caused by the provision or failure to provide **Business Services** and giving rise to said **Claim** or **Circumstance** as notified.

The **Premium** for this **Policy** has been rated on the basis that the **Insured** shall comply with these conditions precedent such that the entitlement of the **Insured** to any indemnity under this **Policy** in respect of any **Claim** in which there is any breach of any condition precedent shall then be forfeit.

## 6. General Terms and Conditions

### 1. Circumstances which may give rise to a Claim

If during the **Period of Insurance** the **Insured** becomes aware of any **Circumstance** which may give rise to a **Claim** for indemnity under this **Policy** (including by receipt of notice of said **Circumstance** from any **Sub Contractor**) and during the **Period of Insurance** the **Insured** gives written notice as soon as reasonably practicable to the **Insurer** in connection with said **Circumstance** and containing the following details:

- a. the names of any potential Claimants and a description of the specific act, error or omission which forms the basis of the Circumstance which may give rise to a **Claim**;
- b. the identity of the specific **Insured** (or **Sub Contractor**) allegedly responsible for such specific act, error or omission;
- c. the consequences that have resulted or may result from such specific act, error or omission;
- d. the nature of any monetary damages or non-monetary relief which may be sought in consequence of such specific act, error or omission; and
- e. the circumstances in which the **Insured** (or **Sub Contractor**) first became aware of such **Circumstance** based on the specific act, error or omission then any **Claim** subsequently made on this **Policy** arising out of or in any way connected to said **Circumstance** shall be deemed to have been first made and reported to the **Insurer** by the **Insured** at the earliest time such written notice containing the details outlined above is received by the **Insurer**.

### 2. Investigation, Defence and Settlement

The **Insurer** shall be entitled but not obliged to take over the conduct of any investigation, defence and settlement of any **Claim** or Circumstance. The **Insurer** shall have full discretion in the handling thereof provided always that the **Insured** shall not be obliged to defend any proceedings unless Queen's Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings should be contested.

### 3. No Settlement without Consent of Insurer

The **Insured** (and / or any **Sub Contractor** seeking an indemnity through the **Insured** from the **Insurer** under this **Policy**) shall not, without the prior written consent of the **Insurer**, admit liability, compromise, settle, or make any offer or payment in respect of any **Claim** or any **Circumstance** which may give rise to a **Claim**.

### 4. Payment in full of Limit of Indemnity in the Annual Aggregate

The **Insurer** shall have the right to pay to the **Insured** (or through the **Insured**, any **Sub Contractor** being granted an indemnity under this **Policy**) the **Limit of Indemnity** in the annual aggregate (and any maximum aggregate sub limit) in full and final settlement of any **Claim** made under this **Policy** and in full and final settlement of any obligation on the **Insurer** to indemnify the **Insured** (or through the **Insured**, any **Sub Contractor** being granted an indemnity under this **Policy**) in respect of said **Claim**.

### 5. Assistance

The **Insured** shall give all such reasonable assistance as the **Insurer** may reasonably require in relation to any matters with which the **Insurer** is involved in the name of and on behalf of the **Insured** (or any

**Sub Contractor**) including any challenge, appeal, amendment of any decision, direction, award or the exercise of any power of an adjudicator or to stay enforcement of any decision, direction, award or exercise of any power by an adjudicator.

## 6. Fraudulent Claims

If the **Insured** makes any **Claim** for an indemnity under this **Policy** (or has made such a **Claim** under any previous **Policy**) which the **Insured** knows or ought to know is false or fraudulent in any way, this **Policy** shall be effectively cancelled *ab initio* and all entitlement of the **Insured** under this **Policy** shall be forfeited.

## 7. No Rights to Third Parties under Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this **Policy** has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this **Policy** .

## 8. Governing Law and Jurisdiction

This **Policy** shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

## 9. Voiding of Policy

If the **Insurer** is entitled, for any reason, to avoid this **Policy** *ab initio*, the **Insurer** may at its absolute discretion elect instead to give notice to the **Insured** that the **Policy** is to be regarded as being in full force and effect, except that no indemnity will be given under this **Policy** for any **Claim** that arises from or is related to any matter that entitled the **Insurer** to avoid this **Policy** .

## 10. Termination of Policy for Specified Events

This **Policy** will immediately and automatically be terminated in the event of any of the following:

- a. the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- b. the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver or administrator over any of the **Insured's** assets;
- c. the suspension by the **Insured** of payment of its debts or the entering into a voluntary arrangement or other scheme of composition with its creditors by the **Insured**;

or any equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled.

## 11. Effect of Insured Breach

If the **Insured** breaches any condition or term of the **Policy** other than a condition precedent, the **Insurer** shall be entitled to reduce any indemnity otherwise to be afforded to the **Insured** and the said reduction shall be to the extent to which the conduct of the **Insured** has prejudiced the position of the **Insurer** (which may result in no indemnity being afforded to the **Insured**) all in the sole judgement of and at the reasonable discretion of the **Insurer**.

## 12. Cancellation of Policy

The **Insurer** or the **Insured** named in the **Schedule** shall be entitled on giving 28 days notice in writing to cancel the **Policy** . Following cancellation the **Insurer** shall refund to such **Insured** the **Premium** less the proportionate share due to the **Insurer** calculated on the basis of the length of time the **Insurer** has been on risk, together with an administration fee equivalent to one twelfth of the gross **Premium** .

### 13. **Dispute between Insurer and Insured**

In the event of a dispute between the **Insurer** and the **Insured** arising out of or in connection with this **Policy** including formation and validity, such dispute shall be referred to a mediator to be agreed by the parties within 14 working days of any dispute arising under the **Policy**. Failing agreement on said mediator then either party may apply to the Centre for Effective Dispute Resolution ("CEDR") or its successor for the appointment of a mediator which shall be final and binding on both parties

If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation shall take, such dispute(s) shall be referred by either party to be determined by a sole arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Chartered Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force whose determination shall be made as an arbitrator and be final and binding upon the parties.

### 14. **Words in Singular/Plural and Headings**

Words importing the singular include the plural and vice versa and references to persons include bodies corporate or unincorporated. Words importing any gender shall include both genders. The descriptions in the headings of this **Policy** are solely for convenience, and do not form part of the terms and conditions of coverage.

### 15. **References to Statutes**

References to statutes or statutory provisions and / orders or regulations made hereunder include that statute, provision, order or regulation as amended, modified, re-enacted, or replaced from time to time whether before or after the date hereof and to any previous statute,

statutory provision, order or regulation amended, modified, re-enacted or replaced by such statute, statutory provision, order or regulation, and any subordinate legislation made under such provisions.

### 16. **Territory**

Coverage shall apply to any **Claim** made against the **Insured** in any jurisdiction anywhere in the world except for:

- a. legal proceedings brought in any court outside the jurisdiction of the **Territory** stated in the **Schedule**; or
- b. brought in any court within the jurisdiction of the **Territory** to enforce a judgment or order made in any court outside the jurisdiction of the **Territory** stated in the **Schedule**; or
- c. liability arising from the provision of **Business Services** and / or services undertaken outside the limits of the **Territory** as stated in the **Schedule**.

### 17. **Estates, Legal Representatives, Spouses and Partners**

The estates, heirs, legal representatives, assigns, spouse and partner (including civil partner) of an **Insured** shall be considered an **Insured** under this **Policy** solely for loss arising from a **Claim** out of their said status, and in the case of a spouse or partner where such **Claim** seeks loss from marital community property, jointly held property or property transferred from the such **Insured** to the spouse or partner. No coverage under this **Policy** is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or partner. All terms and conditions of this **Policy** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouse and partner.

## Disputes and Complaints

It is our intention to provide you with a first class service. However there may be occasions when you feel that this objective has not been achieved. If you are dissatisfied with any aspect of the service that you receive, please contact your usual insurance advisor or:

The Claim Manager  
CNA Insurance Company Limited  
International House, 1 St Katharine's Way  
London E1W 1UN

### **Please provide the following information with your complaint:**

1. Quote the policy and/or claim number
2. Identify the name of any claims handling organisation with whom you have been dealing and their reference number
3. State the nature of your complaint

You will receive an acknowledgement within 5 working days of receipt of your complaint together with a detailed timetable of the actions we will take to investigate/handle your complaint.

### **If after taking this action you are dissatisfied with our response please write to:**

Chief Executive Officer  
CNA Insurance Company Limited  
International House, 1 St Katharine's Way  
London E1W 1UN

### **If the matter is not resolved to your satisfaction you may request assistance from:**

The Consumer Information Department  
The Association of British Insurers  
51 Gresham Street  
London EC2V 7HQ  
Telephone No. +44 (0)20 7600 3333  
Facsimile No. +44 (0)20 7696 8999  
Email address [info@abi.org.uk](mailto:info@abi.org.uk)  
CNA Insurance Company Limited is a member of the ABI.

### **Alternatively you may seek assistance from:**

The Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London E14 9SR  
  
Telephone No. 0845 080 1800  
Email address [enquiries@financial-ombudsman.org.uk](mailto:enquiries@financial-ombudsman.org.uk)  
Website [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

The Financial Ombudsman Service will become involved if you are an eligible complainant as defined by the rules of the Financial Services Authority.

The existence of this complaints procedure does not affect any right of legal action you may have against CNA Insurance Company Limited.



International House 1 St. Katharine's Way London E1W 1UN United Kingdom  
Tel: +44 (0)20 7954 9300 - Fax: +44 (0)20 7954 9301  
E-mail [infouk@cnaeurope.com](mailto:infouk@cnaeurope.com)

[www.cnaeurope.com](http://www.cnaeurope.com)

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