

Policy



**CNA**

# Professional Indemnity for Surveyors

## Any One Claim - Policy

### Contents

	<i>Page</i>
1. Insuring Clauses 1A and 1B	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	13
6. General Terms and Conditions	15
Disputes and Complaints	18

# Surveyors

## Any One Claim - 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 Clauses 1A and 1B

#### Insuring Clause 1A

1. The **Insurer** agrees to indemnify the **Insured** up to but not exceeding the **Limit of Indemnity** stated in the **Schedule** in respect of a **Claim** first made against the **Insured** and notified during the **Period of Insurance** against **Civil Liability** arising out of:
  - a. the provision or failure to provide **Professional Services**;
  - b. libel slander and/or defamation in connection with the provision or failure to provide **Professional Services**,
  - c. negligent advice, misstatement or representation in connection with either :
    - (i) the provision or failure to provide **Professional Services, or**
    - (ii) negligent advice, misstatement or representation in the provision of or failure to provide **Professional Services**, via extranet, internet or the website of the **Insured**, or electronic transmission of mail or documents, up to a maximum sub limit of £250,000
  - d. any unintentional breach of confidentiality;
  - e. any unintentional infringement of copyright, design right, registered design, trademark, or patent or any other intellectual property rights.
2. The **Insurer** agrees to indemnify the **Insured** in respect of a **Claim** first made against the **Insured** in connection with the provision of **Professional Services** and notified to the **Insurer** during the **Period of Insurance** arising out of negligent error, act or omission or breach of duty of care, up to a maximum annual aggregate sub limit of £250,000 as stated in the **Schedule** for
  - a. (i) asbestos and / or
  - (ii) pollution;

always provided that there shall be no liability to indemnify or make any payment under this **Policy** to any party for any **Claim** resulting from a. ( i ) or (ii) above, directly or indirectly based on or arising out of or in any way involving:

  - b. (i) the carrying out of asbestos inspections or environmental audits by the **Insured**; and / or
  - (ii) bodily injury or the fear of suffering bodily injury.
3. The **Insurer** agrees
  - a. to indemnify **Defence Costs and Expenses** incurred by the **Insured** in connection with a **Claim** arising under Insuring Clauses 1 A 1a. to 1e. and
  - b. the **Limit of Indemnity** shall not include **Defence Costs and Expenses; except that**

- c. the maximum annual aggregate sub limit in Insuring Clause 1 A 2. shall include **Defence Costs and Expenses**.
4. 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; and
  - b. subject to an **Excess** of £1,000 each and every **Claim** for said loss of or damage to **Documents** except that the **Insurer** will not pay for any loss or damage brought about or contributed to by any dishonest or fraudulent acts of the **Insured**.
5. The **Insurer** agrees to indemnify the **Insured** up to but not exceeding the **Limit of Indemnity** 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 1.5 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. 5 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 the **Insured** for any sum payable as a compensation award up to but not exceeding the **Limit of Indemnity** stated in the **Schedule** in respect of a final and binding award or determination where the **Ombudsman** has accepted any complaint for review as **Ombudsman** under any recognised scheme, provided always that any **Claim** arising from said complaint giving rise to said compensation award or determination is first made against the

**Insured** and notified to the **Insurer** during the **Period of Insurance** and arises out of the provision of **Professional Services** by the **Insured**.

2. The **Insurer** agrees to indemnify **Defence Costs and Expenses** incurred by the **Insured** with the written consent of the **Insurer** for conduct of the defence of the **Insured** in respect of any prosecution brought against the **Insured** in the United Kingdom and notified by the **Insured** to the **Insurer** during the **Period of Insurance** for alleged offences under sections 21(1), 21(2), 22(6) or 47(1) of the Data Protection Act 1998 up to a maximum sub limit of £250,000 as specified in the **Schedule** and said sub limit shall be included in any **Limit of Indemnity** applying as stated in the **Schedule** to any **Claim** arising out of the same matters that are the subject of the defence as outlined above.
3. The **Insurer** agrees to indemnify **Defence Costs and Expenses** incurred by the **Insured** with the written consent of the **Insurer** for conduct of the defence of the **Insured** in respect of any prosecution brought against the **Insured** and notified by the **Insured** to the **Insurer** during the **Period of Insurance** up to a maximum sub Limit of £250,000 for alleged offences under the
  - a. Construction (Design and Management) Regulations 2007;
  - b. Health and Safety at Work etc. Act 1974;
  - c. Health & Safety at Work (Northern Ireland) Order 1978;
  - d. Corporate Manslaughter and Corporate Homicide Act 2007;
  - e. Estate Agents Act 1979;
  - f. Property Misdescriptions Act 1991

However indemnity for said **Defence Costs and Expenses** under 1 B 3. above shall only apply:

- i.* where the **Insurer** takes the view that conduct of said defence in such proceedings would be of benefit in any subsequent or concurrent civil proceedings that arise from the same matters that are the subject of the said prosecution in 1B 3. above; and
  - ii.* that such proceedings are or could be matters that are the basis of a **Claim** under **Policy**; and
  - iii.* the total indemnity that shall be payable under this section 1 B 3. of this **Policy** for said **Defence Costs and Expenses** shall not exceed the sub Limit of £250,000 as specified in the **Schedule**; and
  - iv.* said sub limit shall be included in any **Limit of Indemnity** applying as stated in the **Schedule** to any **Claim** arising out of the same matters that are the subject of the defence as outlined above.
4. The **Insurer** agrees to indemnify **Defence Costs and Expenses** which shall include daily rates as specified below at (i) and (ii) incurred with the written consent of the **Insurer** for attendance as a witness at any court or tribunal in the United Kingdom in connection with a **Claim** notified to the **Insurer** and otherwise covered under this **Policy**, up to a maximum sub limit of £250,000 as specified in the **Schedule**:
  - i.* at a daily rate for each daily attendance required as above at £300 per day for any **Director Principal or Partner** of the **Insured**
  - ii.* at a daily rate for each daily attendance required as above at £150 for an **Employee**.

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

- a. The **Limit of Indemnity** (and sub limits as applicable ) under this Policy in respect of any one **Claim** shall be the amount specified in the **Schedule**; and ( except where otherwise specified )
- b. **Defence Costs and Expenses** shall be payable in addition to the **Limit of Indemnity**; always provided however
- c. that following the exhaustion of any applicable **Limit of Indemnity** by payment of any **Claim** (including but not limited to payment in full and final settlement of any **Claim**) the maximum amount of **Defence Costs and Expenses** in addition that the Insurer shall be liable to pay shall be limited to the proportion that the exhausted **Limit of Indemnity** bears to the total amount of the said **Claim**.
- d. 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**.
- e. For the purposes of this **Policy** and including the application of any **Excess** sub limit 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** sub limit and **Limit of Indemnity** provisions of this **Policy** as outlined above shall operate accordingly .
- f. 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 from a third party unconnected with said **Joint Venture** and said **Claim** arises solely from the provision of or failure to provide **Professional Services** by the **Insured**.

#### 2. Valuation Reports on Real Property

Survey inspection or valuation reports of real property unless such surveys inspections or valuations shall have been made

- a. by a Fellow or Professional Associate of the Royal Institution of Chartered Surveyors (RICS);
- b. by a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA);
- c. by a Fellow or Associate of Faculty of Architects and Surveyors (FAS) Ltd;
- d. by a Fellow or Associate of the Royal Institute of British Architects (RIBA);
- e. by a fellow or of the Royal Institute of Architects of Scotland (RIAS);
- f. by anyone who has at least 5 years experience of such work;
- g. by any other person delegated by the **Insured** to execute such work as part of their training subject always to supervision of such work by a person qualified in accordance with paragraphs a to e. above.

#### 3. Housing Grants Construction and Regeneration Act Claims

An adjudication award made under the Housing Grants Construction and Regeneration Act 1996 (the "Act") where the **Insured** has agreed that the adjudicator is entitled to make an award that is finally binding upon the **Insured** or where the **Insured** has agreed to an Adjudication process materially more onerous than that provided under the Act.

#### 4. Investment / Trading Losses

- a. The depreciation, failure to appreciate or loss of any investments and/or **Property** for investment purposes by any party 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** unless arising solely from the provision of or failure to provide **Professional Services** by the **Insured** as per Insuring Clause 1 A 1.a. ;  
and /or
- b. any trading losses or trading liabilities of the **Insured** or any party including but not limited to any loss of or shortfall in a client account.

#### 5. Collateral Warranty or Duty of Care Agreement

Any **Collateral Warranty**, Duty of Care or other agreement

- a. that has been assigned on more than two occasions since the agreement was entered into by the **Insured**, unless liability would have attached to

the **Insured** in any event in the absence of such **Collateral Warranty** or agreement;

- b. where the effect of the **Collateral Warranty** or agreement is to deprive the **Insured** of a limitation defence which would otherwise have been available under any relevant statute or law.

#### **6. Financial Services Regulation**

Any liability from any business of the Insured which is regulated by the Financial Services and Markets Act 2000 unless arising solely from the provision of or failure to provide Professional Services by the Insured as per Insuring Clause 1 A 1.a..

#### **7. Defective Materials and / or Defective Workmanship**

Any defective materials and / or defective workmanship.

#### **8. Fungi or Microbes**

Any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of **Fungi or Microbes**; or the actual, alleged or threatened failure to detect, report, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, dispose of or in any way respond to, assess the effects of or advise of the existence of any **Fungi or Microbes** unless arising out of the provision or failure to provide **Professional Services** to the legally required standard of care, diligence and expertise as per Insuring Clause 1 A 1a..

### 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.

**2. Property Damage**

Damage to or destruction of any **Property** including loss of use unless arising out of the provision of or failure to provide **Professional Services** to the legally required standard of care diligence and expertise as per Insuring Clause 1 A 1 a., 1 A 4. and 5.

**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. Pollution**

Any pollution, seepage, discharge or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof unless otherwise covered in this **Policy** and as per Insuring Clause 1 A 2. a. (ii).

**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 professional 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 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. Warranty or Guarantee**

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

**11. Status as Director/Member**

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

**12. 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 .

**13. Bankruptcy**

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

**14. Asbestos and Silica**

Any manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos and / or silica, materials or products containing asbestos and / or silica, whether or not there is another cause of loss which may have contributed directly, concurrently or in any sequence to that loss, injury, damage, cost or expense unless otherwise covered in this **Policy** and as per Insuring Clause 1 A 2. a. (i)

**15. Malicious Statements**

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

- a. 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**.

**16. Agreement to Finance**

Any agreement to provide or introduce finance.

**17. Failure to Maintain Insurance**

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

**18. 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 or failure to provide **Professional Services** to the legally required standard of care diligence and expertise as per Insuring Clause 1 A 1.a.

## 4. Definitions

### 1. Circumstance

means any circumstance which may give rise to a **Claim** against the **Insured** or any circumstance which the **Insured** becomes aware of or should reasonably have become aware of which may give rise to a **Claim** against the **Insured**.

### 2. Civil Liability

means damages, settlements entered into with the written consent of the **Insurer**, judgments and third party claimant costs and expenses which the **Insured** is legally liable to pay. **Civil Liability** shall not include fines, prosecution costs, (except as otherwise provided for in this **Policy**), penalties, forfeitures or any penal, punitive, liquidated, exemplary, multiplied or aggravated damages or additional damages that may be awarded as per section 97( 2 ) of the Copyright Designs and Patent Act 1988.

### 3. Claim

means any demand made on or assertion of any right against the **Insured**. **Claim** shall not include criminal proceedings (except as set out in Insuring Clause 1 A 5., 1 B 2., 3 and 4. of this Policy ) or any disciplinary investigations or proceedings (except as set out in Insuring Clause 1B 1 of this Policy ).

### 4. Collateral Warranty

means an agreement whereby the **Insured** agrees to extend certain of its contractual or tortious obligations in the provision of **Professional Services** to any party other than a party with whom it had the original agreement to provide such services.

### 5. Defence Costs and Expenses

means legal fees and legal expenses incurred in the investigation 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**.

### 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 all records used in **Professional Services** whether kept in paper (excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, 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 **Professional 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 **Professional 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. Fungi**

means any form of fungus, including but not limited to yeast, mould, mildew, rust, smut or mushroom, and any spores, mycotoxins, odours or any other substances, products, or by-products produced by, released by, or arising out of the current or past presence of fungi.

**11. 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.

**12. Insurer**

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

**13. 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.

**14. 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.

**15. Limit of Indemnity**

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

**16. Member**

means a member of the **Insured** where the **Insured** is a limited liability partnership

incorporated under the Limited Liability Partnerships Act 2000.

**17. Microbe**

means any non-fungal micro organism or non-fungal colony-form organism that causes infection or disease including but not limited to any spores, mycotoxins, odours or any other substances, products, or by products produced by, released by, or arising out of the current or past presence of microbes.

**18. Partner**

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

**19. Period of Insurance**

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

**20. Policy**

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

**21. Premium**

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

**22. Principal**

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

**23. Professional Services**

means those surveying professional services performed or advice given by the **Insured** in relation to those activities declared in the **Proposal** and / or in any other information submitted by the **Insured** to the **Insurer** for this **Policy**.

**24. Property**

means:

1. Currency, coins and bank notes in current use and having a face value;
2. Travellers cheques, register cheques and money orders held for sale to the public;

3. 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;
  4. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**; and / or
  5. any tangible property that has intrinsic value.
4. commission of an act that interferes with or disrupts an electronic or communications system

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.

## 25. **Property Damage**

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

## 26. **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**.

## 27. **Schedule**

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

## 28. **Territory**

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

## 29. **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

## 5. Conditions Precedent

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

### 1. Notification of Adjudication Referral or Claim

The **Insured** shall give the **Insurer** notice in writing within 2 working days of receipt by the **Insured** of any notice or intention to adjudicate, notice of adjudication or referral notice or otherwise within 14 working days of the discovery, receipt or allegation of any **Claim**;

### 2. Notification

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;

### 3. Sub Contractor Professional Indemnity Insurance

The **Insured** shall, where they have engaged any person, firm or company ("Sub Contractors") to provide consultancy services as part of the **Professional Services**, ensure that at the time of engagement such Sub Contractors have their own professional indemnity insurance which:

- a. provides an indemnity to such Sub Contractors for any negligent act, error or omission in the conduct of their activities or duties whilst acting on the behalf of the **Insured**,
- b. carries an aggregate limit of indemnity which is the same amount as the **Limit of Indemnity** stated in

this **Policy** or £1,000,000, whichever is the lesser;

### 4. 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 with any party, limiting or restricting in any way any rights of recovery of the **Insurer**.

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**.

### 5. Unintentional Non - Disclosure

The **Insurer** shall not exercise any right of avoidance under this **Policy** on the grounds of non disclosure or alleged non disclosure or misrepresentation of facts or statements alleged to be untrue in the **Proposal** and /or any other information supplied to the **Insurer** always provided that the **Insured** shall establish to the satisfaction of the **Insurer** if required to do so by the **Insurer** that said non disclosure or alleged non disclosure or misrepresentation of facts or statements alleged to be untrue did not involve any fraudulent conduct or any intent to deceive the **Insurer** on the part of the **Insured**.

If however the non disclosure or alleged non disclosure or misrepresentation of facts or statements alleged to be untrue involves failure on the part of the **Insured** to notify the **Insurer** of any **Circumstance**,

then any indemnity granted by operation of this section of this **Policy** shall be limited to:

(i) the indemnity that would have been available under any previous policy or this **Policy** had the **Circumstance** been duly and properly notified;

and

(ii) the **Limit of Indemnity** or any other variation to the terms and conditions of this **Policy** applying at the time when the said **Circumstance** should have been duly and properly notified to this **Policy**.

## 6. **Prejudicial Breach of Policy Condition**

Where any breach or non compliance with any condition of this Policy results in prejudice to the Insurer as regards:

- a. the handling or settlement of any **Claim**
- b. the amount of any **Civil Liability** arising
- c. the obtaining of any reimbursement or amounts in subrogation from any dishonest or fraudulent party

then the amount of any indemnity payable under this **Policy** shall be reduced by such amount as in the sole opinion of the **Insurer** would have been due to have been paid under this **Policy** in the absence of said prejudice above.

## 7. **Minimum Insurance Requirements**

In any dispute asserting that the terms, conditions, limitations and exclusions of the insurance in this **Policy** operate less favourably to the **Insured** than the minimum insurance requirements of the Royal Institution of Chartered Surveyors, applicable and in force at the inception of this **Policy**, it is agreed that said minimum insurance requirements shall take precedence over the terms, conditions, limitations and exclusions of the insurance in this **Policy**.

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** 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** 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 **Insured** 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** 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

The **Insurer** shall have the right to pay to the **Insured** the **Limit of Indemnity** ( and any maximum annual 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** 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** 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 **Professional 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@abu.org.uk](mailto:info@abu.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.



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