



# **POLICY WORDING**

## **EXCESS PROFESSIONAL INDEMNITY POLICY**



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# About Your Policy

This policy has been produced by Pen Underwriting Limited, a Managing General Agent of the Insurer listed in the Schedule. The Insurers have delegated authority to Pen Underwriting Limited to underwrite Insurance for You on their behalf.

Your Policy is made up of Sections prepared from a proposal form or declaration or statement of fact provided by You or from Your instructions or any information in connection with this insurance provided to Pen Underwriting or the Insurer or Your insurance adviser.

This policy wording explains the insurance provided under this contract.

Each Section may include terms Definitions Conditions and Exclusions unique to the Section which should to be read

in conjunction with the Policy Definitions, Conditions and Exclusions.

An Endorsement forms an addition to the Section and varies the insurance provided by the Section.

The Schedule or Appendix and any Endorsement should be read together for precise details of Your insurance protection.

Please take care to review all documentation carefully to ensure that the information provided accurately reflects

Your circumstances and that the cover provided suits Your requirements.

You should pay particular attention to any terms conditions limits and exclusions including endorsements which may require You to take action.

## Duty of Fair Presentation

This Policy is a contract between You and the Insurer.

**Please read the whole document carefully.** It is arranged in different sections. It is important that

- You are clear which sections You have requested and want to be included;
- You understand what each section covers and does not cover;
- You understand Your own duties under each section and under the insurance as a whole.

Please contact Your broker immediately if this Document is not correct or if You would like to ask any questions.

**Important Notice:** The Insured is required to make a fair presentation of the risk to Insurers.

If the Insured breaches its duty to provide a fair presentation and any such breach was deliberate or reckless, Insurers may regard the Policy as void and are not required to return any paid Premium to the Insured.

If the breach was not deliberate or reckless, Insurers' remedy shall depend upon what Insurers would have done if the Insured had complied with the duty of fair presentation:

1. Insurers may regard the Policy as void if Insurers would not have entered into the Policy on any terms in the absence of the breach. In this case, the Insurers must return the premium paid.
2. If the Insurers would have entered into the Policy, but on different terms (other than terms relating to premium) the Policy is to be treated as if those different terms applied from the outset, if the Insurer so requires.
3. If the Insurers would have entered into the Policy but would have charged a higher premium the Insurers may reduce proportionately the amount to be paid on a Claim (and, if applicable, the amount already paid on prior claims).

Where: (i) there has been a failure to comply with a term (express or implied) of this Policy, other than a term which defines the risk as a whole; and (ii) compliance with such term would tend to reduce the risk of loss of a particular kind and/or loss at a particular location and/or loss at a particular time, the Insurer cannot rely on the breach of such term to exclude, limit or discharge its liability if You show that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred

If You breach any warranty in this Policy, the Insurer's liability under the Policy shall be suspended from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Insurer will have no liability to You for any loss which occurs, or which is attributable to something happening, during the period when the Insurer's liability is suspended.

Authorised Signatory  
Jonathan Turner



**Chief Executive  
Pen Underwriting**

## Compensation Scheme

The providers of this insurance as defined in this Policy are covered by the Financial Services Compensation Scheme (FSCS). If they cannot meet their obligations You may be entitled to compensation under this scheme depending on the type of insurance and the circumstances of the Claim

You are covered for 90 per cent of the Claim without any upper limit. However, for compulsory classes of insurance You are covered for 100 per cent of the Claim without any upper limit.

## How To Make A Claim

At Pen Underwriting, we understand that claims form a critical component of our offering the moment the Policy becomes tangible and we are relied upon to deliver upon our commitment to You.

Pen Underwriting have assembled an experienced team who embody our three key principles of:

- 1) **Partnership** – working together to achieve the optimum outcome to the Claim
- 2) **Expertise** – we employ staff and engage service providers who are experts in their field
- 3) **No-nonsense** – we apply a flexible and proactive approach to the claims process

For details on how to notify Your Claim, please refer to Your Schedule.

## The Law That Governs This Policy

Unless the parties have agreed otherwise in writing any dispute concerning the interpretation of this Policy shall be governed and construed in accordance with English law and shall be resolved within the exclusive jurisdiction of the courts of England and Wales.

## Data Protection

Pen Underwriting Limited are the data controller of any personal information you provide to us or personal information that has been provided to us by a third party. We collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, brokers, reinsurers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

We may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please see our Privacy Policy - <https://www.penunderwriting.co.uk/Privacy-and-Cookies>. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

## General provisions applicable to all sections of the Policy

### Alteration

The **Insured** shall give notice to the **Insurer** of any material alteration or change in circumstances affecting the risk covered and until the **Insurer** shall have agreed in writing to accept liability for such altered risk the **Insurer** shall not provide an indemnity in respect of liability arising from such altered circumstances.

This **Policy** will be avoided if after the commencement of this insurance:

1. the **Insured's Business** is wound up or carried on by a liquidator or receiver or permanently discontinued;
2. the interest of the **Insured** ceases other than by death; or
3. any alteration is made either in the **Insured's Business** or in the described **Premises** or **Property** therein whereby the risk of loss destruction or damage is increased;

unless agreed in advance by the **Insurer** in writing.

Section 3 of this **Policy** shall be avoided in respect of any

**Property Insured** altered after the commencement of this insurance:

1. by removal;
2. whereby the risk of damage is increased; or
3. whereby the interest of the **Insured** ceases except by will or operation of law; unless agreed in advance by the **Insurer** in writing.

## Operative Clause

In consideration of the **Insured** having paid to the **Insurer** the **Premium** in accordance with the Premium Payment Condition, and in reliance upon all statements made in the **Proposal** and any information provided to the **Insurer** on behalf of the **Insured**, the **Insurer** agrees, subject to all Terms, Conditions and Exclusions of the **Policy**, to provide insurance in the manner and to the extent provided hereinafter:

Provided that:

1. the liability of the **Insurer** shall not exceed the applicable limits as set out in the **Policy**, except where agreed by the **Insurer** in writing and incorporated into this **Policy**; and
2. the liability of each **Insurer** shall be several and not joint, and shall be limited to the proportion set against each insurer's name in the Schedule of Insurers; and
3. the liability of the **Insurer** for any loss, claim or coverage shall be determined by reference to the most specific Section, clause, Insuring Clause, cover, Extension or Exclusion that may be applicable to such head of loss or element of the claim. For the purpose of this clause, any Extension shall be considered the more specific clause where held against cover under its Sections general Insuring Clause; and

Signed on behalf of the **Insurer**

David Brosnan  
Chief Executive Officer



# General Definitions

Except for headings, unless expressed to the contrary, words, terms and phrases that are printed in bold shall bear the meanings set out below.

Where any section or provision of this **Policy** contains specific defined words, terms and phrases, they apply to that particular section or provision only and must be read in conjunction with the following General Policy Definitions, unless otherwise stated.

## Business

means the business activities of the **Insured** as detailed in the schedule and/or **Proposal**.

## Costs and expenses

means all costs and expenses defined in the **Underlying insurance**.

## Circumstance

means the same as Circumstance defined in the **Underlying Insurance**.

## Claim

means the same as Claim defined in the **Underlying Insurance**.

## Insured

Means the entity specified in the Schedule.

## Insured loss

means a loss indemnified in accordance with the terms, limitations, exclusions, conditions and definitions of the **Underlying insurance**.

## Insurer

means the insurer stated in the Schedule.

## Limit of indemnity

As regards the **Underlying insurance**, Limit of indemnity means:

1. the same as is defined in the **Underlying insurance**; and
2. no more than the total limit specified therein.

The **Insurer's** liability under this **Policy**, is subject to the applicable Limits of Indemnity as specified in the schedule, which is the most the **Insurer** will pay in respect of any one claim, including any interrelated claims arising out of any one insured event, occurrence or series of occurrences. For the purposes of applying the limits, all interrelated claims shall be considered one claim.

## Policy

means:

1. all terms, conditions, exclusions, extensions and sections indicated as operative in the schedule, all whether special or of general application; and
2. the schedule and any **Proposal**; and
3. all schedules, notices, appendices, subjectivity notices and other documents agreed by the **Insurer** and the **Insured**, attaching from time to time; and
4. all endorsements and variations issued from time to time,

all of which shall be read together and constitute the contract of insurance.

## Period of Insurance

means the period shown in the schedule or such other period agreed by the **Insurer** in writing.

## Proposal

means any information supplied by or on behalf of the **Insured** by any medium including but not limited to electronic, written or oral, which shall include any completed proposal form and other relevant information that the **Insurer** was provided for the purposes of assessing the risk insured under this **Policy** and the terms and conditions to be applied. Where this **Policy** is direct or indirect renewal or replacement of a preceding **Policy** underwritten by the **Insurer** and no new proposal is completed, the last available proposal shall be deemed to be applied to this **Policy**.

## Primary Policy

Primary Policy means the policy specified as such in the schedule.

## Ultimate net sum

Ultimate net sum means the sum actually paid in the settlement of an **Insured loss** for which the **Insured** is liable after making proper deductions for all recoveries, salvages and other insurances, other than the **Underlying insurance** itself, whether recovered or not but excluding **Costs and expenses** where **Costs and expenses** do not reduce the **Limit of indemnity** of the **Underlying insurance**.

## Underlying insurance

Underlying insurance means the **Primary policy** and those policies specified in the schedule as Underlying insurance.

## War

War means, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including terrorism.

# Insuring Clause

## Follow Form

This **Policy** shall be subject to the same terms, conditions, definitions, limitations and exclusions as the **Primary policy** and any additional exclusions of the **Underlying insurance**. Should any provision of the **Underlying insurance** conflict with the provisions of this **Policy** (including but not limited to any condition, definition, limitation or exclusion of this **Policy**), the provisions of this **Policy** shall apply and be determinative in relation to any obligation or liability of the **Insurer**.

## Indemnity

The **Insurer** agrees to indemnify the **Insured** for the amount of the **Ultimate net sum** which exceeds the total **Underlying insurance Limit of indemnity** that the **Insured** is held or determined to be legally liable to pay as damages, including claimant costs recoverable from the **Insured** as a result of an **Insured loss**, provided that the **Insurer's** liability under this **Policy** shall not exceed any **Limit of indemnity** applying to this **Policy** stated in the schedule.

## Limit of Liability

The **Insurer's** liability under this **Policy**, is subject to the applicable **Limits of indemnity** as specified in the schedule, which is the most the **Insurer** will pay in respect of any one claim, including any interrelated claims arising out of any one insured event, occurrence or series of occurrences.. For the purposes of applying the limits, all interrelated claims shall be considered one claim.

# Costs and Expenses

The **Insurer's** liability for **Costs and expenses** under 'Follow Form' and 'Indemnity' of the Insuring Clause, above, is subject to the following conditions:

## **Underlying costs in addition**

Where the terms of the **Primary policy** provide that **Costs and expenses** do not reduce the **Limit of indemnity** of the **Primary policy**, then any such **Costs and expenses** incurred or paid under this **Policy** shall not reduce the **Limit of indemnity** of this **Policy**. The **Insurer** shall contribute to **Costs and expenses** incurred in the investigation, settlement or defence of an **Insured loss** that may give rise to a claim in excess of the total **Limit of indemnity** of the **Underlying insurance** in the ratio that this **Policy's** share of damages payable, including claimant costs recoverable from **Insured**, as finally settled bears to the total amount of damages payable, including claimant costs recoverable from **Insured**.

## **Underlying costs inclusive**

Where the terms of the **Primary policy** provide that **Costs and expenses** reduce the **Limit of indemnity** of the **Primary policy**, then any such **Costs and expenses** incurred or paid under this **Policy** shall reduce the **Limit of indemnity** of this **Policy**.



# Special Conditions

The following conditions apply, in addition to the General Policy Conditions.

## Attachment of Liability

Liability to pay under this **Policy** shall not attach unless and until the **Primary policy** and **Underlying insurance** insurers shall have admitted liability for the **Primary policy** and **Underlying insurance** limits or unless and until the **Insured** has by final judgement been held liable to pay an amount which exceeds such **Primary policy** and **Underlying insurance** limits and then only after the **Primary policy** and **Underlying insurance** insurers have paid or have been held liable to pay the full amount of the **Primary policy** and **Underlying insurance** limits.

## Concurrency of underlying insurance

Where the **Primary policy** or **Underlying insurance** is not concurrent with this **Policy** and the aggregate limit of the **Primary policy** or **Underlying insurance**, if any, has been eroded before this **Policy** inception, the **Insurer** will accept the erosion only where it has been previously advised and accepted by the **Insurer**. In any case, the aggregate limit of this **Policy**, if any, will continue to apply.

## Ex-Gratia claims

Any decision of the **Underlying insurance** to accept a claim ex-gratia or without prejudice without the prior written acceptance of the **Insurer** shall not be binding on the **Insurer** and shall not operate to erode any aggregate limit of the **Underlying insurance**, nor shall any action or decision of the **Underlying insurance** which prejudices the **Insurer** in the conduct or settlement of any claim under this **Policy** be binding on the **Insurer**.

**Underlying insurance**, nor shall any action or decision of the **Underlying insurance** which prejudices the **Insurer** in the conduct or settlement of any claim under this **Policy** be binding on the **Insurer**.

## Failure of underlying insurance

In the event one or more insurer under the **Underlying insurance** fails to pay any claim or **Costs and expenses** incurred in the defence or settlement of such claim as a result of the insolvency, bankruptcy or liquidation of such insurer, then the **Insured** shall be deemed self-insured for the amount of the limit of liability of such insurer which has not paid as a result of such insolvency, bankruptcy or liquidation.

## Insurer consent

In the event of a loss arising to which the **Insurer** may be liable to contribute, no settlement or costs or expenses shall be incurred on the **Insurer's** behalf without the **Insurer's** written consent being first obtained and if the **Insurer** so consents it shall contribute to the said costs in the proportion that the **Insurer's** share of the loss as finally settled bears to the total sum payable. If however a settlement of the loss be practicable whether by compromise or otherwise for a sum not exceeding the

**Primary policy** and **Underlying insurance** limits, no costs shall be payable by the **Insurer** and no settlement of a loss by agreement shall be effected by the **Insured** for a sum in excess of the **Primary policy** and **Underlying insurance** limits without the written consent of the **Insurer**.

## Primary Policy

It shall be a condition in respect of any claim under this **Policy** that the **Insured** shall have provided the **Insurer** with a full copy of the **Primary Policy** and the **Insurer** shall have had a reasonable opportunity being not less than 30 days to review the same and advise the **Insured** whether any additional terms or conditions or additional premium should apply under this **Policy** in the light of such review. Any review or investigation or negotiation of any claim by the **Insurer** prior to receipt of a copy of the **Primary Policy** shall be without prejudice to the fact that the **Insurer** shall have no liability to make any payment under the **Policy** in relation to that claim (including without limitation in respect of **Costs and expenses**) unless and until a copy of the **Primary Policy** is provided to the **Insurer** and the **Insurer** has had a reasonable opportunity to review as stated above.

# Special Extensions

Unless stated as in-operative in the schedule, the **Insurer** hereby agrees, subject to the terms and conditions of this **Policy**, to provide the following extensions of cover, as set out below.

## Drop down on reduced aggregates

Where the **Limit of indemnity** of the **Underlying insurance** is reduced by an **Insured loss** for which this **Policy** provides an indemnity and to which an aggregate limit applies in the **Underlying insurance** this **Policy** shall apply in excess of such reduced amounts but not in respect of any reduced inner aggregate or sub limits.

## Exhausted aggregates

Where the **Limit of indemnity** of the **Underlying insurance** is exhausted by an **Insured loss** for which this **Policy** provides an indemnity and to which an aggregate limit applies in the **Underlying insurance** this **Policy** shall apply in excess of such exhausted amounts but not in respect of any reduced inner aggregate or sub limits, however that this **Policy** shall only pay in excess of the retention or deductible applicable to the **Primary policy**, which shall be applied to any subsequent claim in the same manner as specified in the **Primary policy**.

## Non-recoverable underlying costs and expenses

The **Insurer** agrees to pay **Costs and expenses** not recoverable from the insurers of the **Underlying insurance** as a result of the insurers of the **Underlying insurance** paying or offering to pay the total **Limit of indemnity** of the **Underlying insurance**, provided that:

1. the **Insurer** has exercised the **Insurer's** right to assume charge of and conduct in the name of the **Insured** the defence or settlement of an **Insured loss**;
2. the **Insurer** shall not pay any **Costs and expenses** incurred by the insurers of the **Underlying insurance** prior to their payment of or offer to pay the total **Limit of indemnity** of the **Underlying insurance** or for which they would otherwise be liable;
3. the **Insurer** shall have the right to appeal a judgment for an amount in excess of the total **Limit of indemnity** of the **Underlying insurance** if the **Insured** or the insurers of the **Underlying insurance** have a right of appeal but elect not to exercise such right. The **Insurer** shall be liable for all **Costs and expenses** incurred with respect to such appeal, subject to the **Limit of indemnity** of this **Policy**.

# General Conditions

## Assignment

Assignment or transfer of this **Policy** or of any of the rights of the **Insured**, shall not be valid without the prior written consent of the **Insurer**.

## Audit and inspection

The **Insurer**, or such representative as the **Insurer** may designate, will be permitted but not obligated to inspect the **Insured's** property and operations at any time. Neither the **Insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe.

## Authorisation

The **Insured** agrees that the first named **Insured** on the schedule will act on behalf of the **Insured** with respect to giving of all notice to the **Insurer** the receipt of notices from the **Insurer**, the payment of the premiums, the receipt of any return premiums that may become due under this **Policy**, and the agreement to and acceptance of Endorsements.

## Cancellation

The **Insurer** may cancel this **Policy** by giving the **Policyholder** written notice, stating when, not less than 30 (thirty) days thereafter, such cancellation shall be effective. The **Insurer** shall then return premium to the **Insured** on a pro rata basis.

The **Insured** may cancel this **Policy** by giving the **Insurer** written notice, stating when, not less than 30 (thirty) days thereafter, such cancellation shall be effective. The **Insurer** shall then return premium to the **Insured** on a pro rata basis with additional deduction of one month's pro-rata premium as an administration fee.

## Change in Circumstances

The **Insured** shall give notice and full particulars as soon as reasonably practicable of any fact or event, which materially changes the information provided to the **Insurer**.

The **Insurer** reserves the right to vary the terms of this **Policy** upon receipt of such notice and particulars, and to accept or deny cover and to establish a separate rate and premium for any such cover.

## Choice of Law and Jurisdiction

This **Policy** shall be governed by, and construed solely in accordance with, the laws of England and Wales/Scotland/Ireland, as applicable. To the extent that any of the provisions of this condition may fail and/or for the purposes of any application under the Arbitration Act 1996, the courts of England and Wales/Scotland/Ireland, as applicable, shall have exclusive jurisdiction to hear and determine any disputes, suits, actions or proceedings that might arise out of or in connection with this **Policy**.

## Dispute Resolution

Any dispute arising out of, or in connection with, this **Policy**, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

1. The number of arbitrators shall be one.
2. The seat, or legal place, of arbitration shall be England.
3. The language to be used in the arbitral proceedings shall be English.

## Fraud

If any benefit is obtained or attempted to be obtained under this **Policy** by way of any fraudulent means or devices by the **Insured**, or anyone acting on the **Insured's** behalf, then in accordance with the Insurance Act 2015 or other legislation the **Insurer** shall not be liable to pay the **Claim** and may terminate the **Policy** with effect from the time of the fraudulent act, retaining any premiums paid.

However, treating a contract as having been terminated does not affect the rights and obligations of the **Insured** or the **Insurer** with respect to a relevant event (for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim) occurring before the time of the fraudulent act.

## Insurance Act 2015

In accordance with the Insurance Act 2015, the **Insured** shall ensure that the information provided by or on behalf of the **Insured** in connection with this insurance (whether at inception or otherwise) is presented in a clear and accessible manner and shall be materially accurate and not omit any material information which is known by the **Insured** or likely to be of relevance to the **Insurer** in accepting the insurance and setting the terms and conditions of this **Policy**.

This may include but not be limited to any knowledge or information:

1. available to, held, known or ought reasonably to have been known by any of the **Insured's** senior management or equivalent, the **Insured's** broker, the **Insured's** risk manager and any individual responsible for this insurance; or
2. which would have been revealed following a reasonable enquiry.

The remedies available to the **Insurer** under the Insurance Act 2015 include:

- a. changing or adding terms and conditions to the **Policy** which may take effect from inception;
- b. the reduction in the amount paid for a **Claim**; or

- c. where the **Insurer** would not have insured the risk; treat the **Policy** as if it never existed, returning any premium received; or
- d. deliberate or reckless acts may cause the **Policy** to be treated as if it never existed.

### Insolvency

The insolvency bankruptcy receivership or any other refusal or inability to pay by the **Insured** and/or any insurer shall not operate to:

1. reduce or exhaust the **Limit of indemnity** of the **Underlying insurance**;
2. increase the liability of the **Insurer** under this **Policy**.

### Limits of Liability

Each cover provided under this **Policy** is subject to the applicable Limit or Sub-Limit as further detailed herein, and specified in the Schedule. For the avoidance of doubt, unless specified, any Sub-Limits comprise part of, and are not in addition to, the overall Limit.

### Maintenance of underlying insurance

It is a condition precedent of this **Policy** that the **Underlying insurance** shall be maintained in full effect during the **Period of Insurance** except for any reduction of the **Underlying insurance** limits solely by payment of any claims or **Costs and expenses** incurred in the defence or settlement of such claims. If this condition precedent is breached then this **Policy** shall automatically and immediately terminate with effect from the date when the **Underlying insurance** cease to be maintained or are deemed to have ceased to be maintained.

No amendments to the **Underlying insurance** shall form part of or be binding upon this **Policy** until agreed in writing or by electronic medium by the **Insurer**.

### Notices to the Insured

Any notices to the **Insured** under this **Policy** shall be provided to the **Insured** at the address shown in the schedule. If properly posted to the **Insured** at such address, the date of posting shall constitute the date such notice was given.

### Premium Payment

It is a condition to the **Insurer's** liability under this **Policy** that the premium shall be paid in full by the **Insured** to the **Insurer**:

1. in accordance with the Brokers Terms of Business Agreement; or
2. no later than 90 (ninety) calendar days of the commencement of the **Period of Insurance**; or
3. in respect of any additional or installment premium, within 90 (ninety) days of it falling due,

whichever is the earliest.

If any premium (including any installment premium) is not paid and accepted by the **Insurer**, the **Insurer** shall provide written notice to the **Insured** in accordance with the 'Cancellation' clause.

### Several Liability

If more than one insurer subscribes to this **Policy**, the obligations of the insurers under this **Policy** are several and not joint, and are limited solely to the extent of their individual subscriptions. The subscribing insurer shall not be responsible for the subscription(s) of any co-subscribing insurer who, for any reason, fails to comply with its duties hereunder.

### Third Party Rights

Unless expressly stated, nothing in this **Policy** is intended to confer a directly enforceable benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or such other equivalent legislation of the jurisdiction in the country of domicile of the **Insured**, or otherwise.

# General Policy Exclusions

The **Insurer** shall not be liable under this **Policy** in respect of any loss based on, arising out of or in any way connected to:

## Asbestos

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.

## Sanctions

any trade or activity which is subject to any applicable economic, political or trade sanction, prohibition or restriction. The **Insurer** shall not be deemed to provide cover and the **Insurer** shall not be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the **Insurer** to any applicable economic, political or trade sanction, prohibition or restriction. The **Insurer** is obligated to comply with all applicable United Nations, European Union and US (including those imposed by the Office of Foreign Asset Control) financial restrictions, measures and sanctions, which shall all form part of this clause.

## War

any loss resulting from **War**.

# Claims Conditions

## Notification

It shall be a condition precedent to indemnification under this **Policy** that the **Insured** shall give the **Insurer** immediate notice in writing in the event of:

- a) i. any loss, **Costs** incurred or **Claim made** against the **Insured** which may exceed 50% of the underlying limits and being otherwise covered under the terms and conditions of the **Underlying Insurance**; and/or
- ii. any **Circumstance** which may give rise to a **Claim**; and

which may exceed 50% of the underlying limits and being otherwise covered under the terms and conditions of the **Underlying Insurance** .

- b) any such Claim, Costs incurred or **Circumstance** made against the **Insured** which may exceed 100% of the underlying limits, and the **Insured** shall give to the **Insurer** 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** and the **Insured** shall not without the prior written consent of the Insurer admit liability, compromise, settle and I or make any offer or payment in excess of 100% of the underlying limits for any such **Claim, Costs and Expenses** incurred or **Circumstance**.

## Claim rights of the Insurer

The **Insurer** is under no obligation to automatically follow settlements in discharge of the liability of the insurers of the **Underlying insurance**. By acceptance of this **Policy**, the **Insured** agrees the **Insurer** may at its own discretion and expense retain counsel to associate in the defence or settlement of any claim and to cooperate with such counsel.

The **Insurer** may at any time pay the **Limit of indemnity** of this **Policy** (less any amounts already paid or incurred) or any lesser amount for which at the **Insurer's** absolute discretion all claims arising out of an **Insured loss** can be settled. The **Insurer** will then relinquish control of such claims and be under no further liability in respect thereof.

The **Insurer** shall be entitled where an **Insured loss** has occurred and a claim has been agreed, to set off any outstanding premiums or charges owing to the **Insurer** under this or any other **Policy**.

## Recoveries and Subrogation

All recoveries or payments recovered or received subsequent to a loss settlement under this **Policy** shall be applied first to subrogation expenses, second to claims or **Costs and expenses** incurred in the defence or settlement of such claims by the **Insurer** hereon, third to claims or **Costs and expenses** incurred in the defence or settlement of such claims by the insurers of the **Underlying insurance**, and fourth to the applicable retention or deductible under the **Primary policy**. The **Insurer** will contribute its share and no more of the costs of any recovery in the proportion

of the benefit the **Insurer** has received from the recovery. Provided always that nothing in this **Policy** shall be construed to mean that loss settlements under this **Policy** are not payable until the **Insured's** ultimate net loss has been finally ascertained.

In the event the **Underlying insurance** elects not to pursue any recovery the **Insurer** shall have the right but not the duty to request the **Insured** transfer to the **Insurer** all rights and remedies, indemnities or advantages held by or available to the **Insured** whether from the insured debtor or from other parties for the purpose of recovering or reducing an **Insured loss** in respect of which a claim has been paid, with the intention that the **Insurer** will be fully subrogated to all such rights, remedies, indemnities and advantages. The **Insured** and any person acting on their behalf must not waive any rights of recourse or recovery and has a continuing duty to perform these obligations.

The Data Protection Notice does not form part of the **Policy**. The Data Protection Notice may be updated, amended, and/or replaced from time to time. The latest version of the Data Protection Notice will be made available on the website of the **Insurer**.

# Data Protection Notice

**Introduction:** This is a concise version of the Insurer's Data Protection Notice. The full version is available here: [www.cnahardy.com](http://www.cnahardy.com) Personal Data means data which by itself or with other data available can be used to identify an individual. The Insurer shall process Personal Data that it obtains in connection with this Policy in accordance with its Data Protection Notice, or where applicable, the Data Protection Notice of its local branch operations in Europe (available at [www.cnahardy.com](http://www.cnahardy.com)) and as summarised herein.

See [www.cnahardy.com/privacy](http://www.cnahardy.com/privacy) for our legal entity and branch office names and registered contact details. You must view this, including if the Insurers' company or branch who is processing your Personal Data is outside the UK (since local country requirements apply there). Please show it to all individuals whose Personal Data is processed by us and obtain their consents (where relevant). UK only: You can contact us at: [DataProtectionOfficer@CNAHardy.com](mailto:DataProtectionOfficer@CNAHardy.com) or write to our Data Protection Officer, General Counsel Department, 13th Floor, 20 Fenchurch Street, London, EC3M 3BY. For our office locations and contact details outside the UK: [www.cnahardy.com/privacy](http://www.cnahardy.com/privacy) If in the Policy documentation (as relevant) certain Personal Data is missing or if this proves to be inaccurate, we may not be able to administer the Policy.

The Insurer ("we", "us", "it") may process Personal Data in order to arrange the Insured's insurance cover (including renewals and Claims), to comply with a legal requirement, to administer accounts, to provide customer service, to perform credit checks, to engage in fraud prevention and market our products and services. In addition, we may use it for the purposes more particularly described below.

**Categories of Personal Data we collect (some of this is collected indirectly e.g. from brokers and intermediaries):** We may collect your full name, home address, date of birth, other identification details such as the proof of identity and proof of address documentation; your contact information, including your work related email address and telephone number, your work address, and (if you are a director, partner or other legal or beneficial owner of the Insured) your home address; criminal conviction or offence details including any actual or suspected fraud, money laundering or other crimes.

## The legal basis and purposes of use:

The purposes of use include arranging the Insured's insurance cover (including communications about the Policy, for renewals and for administration/processing of Claims and of the Policy), for management and audit of our business operations including accounting, to verify identities such as sole traders, directors, officers, partners and other legal or beneficial owners of the Insured, to perform fraud prevention and anti-money laundering checks, for establishment and defence of legal rights, to comply with legal or regulatory requirements, for other activities relating to the prevention, detection and investigation of crime, to administer accounts and provide customer service, for market research and to market our products and services and those of our Group of companies.

The legal basis includes processing necessary to perform our obligations under the Policy (if you are the individual entering

into that Policy with us – e.g. sole traders); processing necessary for our legitimate interests and those of our other companies and branches, including for our good governance obligations, monitoring emails and other communications (see below) and to administer the Policy; and processing necessary for compliance with our legal obligations or those of the relevant company or branch within CNA Hardy or to establish or defend legal claims or rights.

We may also process Personal Data based on your consent. For instance, if you request us to share it with other people or organisations; when we process special categories of personal data about you at your request (this is defined in the full version) and to send marketing communications where we have asked for consent to do so. You are free at any time to withdraw your consent. The consequence might be that our ability to administer the Policy is affected or that we cannot do certain things for you.

**Data sharing:** In order to arrange the Insured's insurance cover, or process any Claims, the Insurer may disclose Personal Data to other companies within its Group, its insurance partners and other third parties who act for the Insurer for further processing, brokers, intermediaries, agents, underwriters, loss adjusters, our legal and other professional advisers, government regulators and the Ombudsman, and other third parties and service providers who help us and our Group to operate our business; with regulatory authorities, courts and governmental agencies to comply with legal orders, legal or regulatory requirements and government requests; in the context of a sale of all or part of our group of companies or transfer of business assets; with Fraud Prevention Agencies and the Association of British Insurers (UK only) or equivalent industry bodies in your country. In some instances, it may be necessary to transfer Personal Data between the Insurer's European and international offices. This may include Personal Data being disclosed to legal or regulatory bodies in order to comply with diverse legal regulations, including those imposed on the Insurer's parent company based in the United States. The Insurer shall endeavour to ensure that any such data processed or disclosed is appropriately protected by technical and operational security measures and contractual measures where necessary.

**International transfers:** Your Personal Data will be transferred outside the UK and the European Economic Area, including to companies in our Group who are in the US. Some countries have applicable laws giving adequate protections for Personal Data. In others (including the US) steps will be necessary to ensure appropriate safeguards, such as contractual obligations of adequacy or requiring the recipient to subscribe or be certified with an 'international framework' of protection. U.S. defence and security authorities may gain access to your Personal Data.

**Criteria used to determine the retention period:** We will apply this criteria: retention in case of queries (e.g. in case of queries from you or the Insured); retention in case of claims (e.g. for the period in which the Insured might legally bring claims against us); and retention in accordance with legal and regulatory requirements (e.g. after the Policy has come to an end).

**Identity verification and Fraud Prevention Checks:** Your Personal Data will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance or employment in future. It will be used to enable law enforcement agencies to access and use your Personal Data to detect, investigate and prevent crime. Fraud prevention agencies can hold your Personal Data for different periods of time, depending on how that data is being used. You can contact them for more information. If you are considered to pose a fraud or money laundering risk, they will keep it for up to six years.

**Data Anonymisation:** Your Personal Data may be converted into statistical or aggregated data which cannot be used to identify you, then used to produce statistical research and reports. This aggregated data may be shared and used in all the ways described above.

**Direct Marketing:** We will use your contact details to keep the Insured informed by post, telephone or e-mail of our additional products or services and developments in the insurance sector generally, including after the Policy has lapsed. You can change your preferences or unsubscribe at any time – details will be in the message – alternatively email or write to us (see above).

**Your rights under applicable data protection law:** Your rights may include the following (noting that these rights do not apply in all circumstances and that data portability is only relevant from May 2018): the right to be informed about our processing of your Personal Data; the right to have your Personal Data corrected if it is inaccurate and to have incomplete personal data completed; the right to object to processing of your Personal Data; the right to restrict processing of your Personal Data; the right to have your Personal Data erased (the “right to be forgotten”); the right to request access to your Personal Data and information about how we process it; the right to move, copy or transfer your Personal Data (“data portability”); and rights in relation to automated decision making including profiling. You have the right to complain to the supervisory authority in your country who enforces data protection laws. In the UK see: <https://ico.org.uk> For supervisory authorities in other countries see

**Insurance market fraud monitoring system (UK only):** We may submit your Personal Data into an insurance industry wide fraud monitoring system. This is an industry wide fraud database administered by a third party and used by other members of the insurance industry in the UK. Other members of the industry will see it if any fraud risk is identified.

Questions about the Insurer’s data protection practices should be directed to the Insurer at the details set out at the beginning of the Data Privacy Notice.



# Complaint Procedure

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. Please direct any enquiry or complaint as follows:

1. If you have a complaint about the service you have received from your insurance advisor, please contact them directly.
2. If you have a complaint relating to a Claim handled by CNA Insurance Company Limited, or a Claim handling agent appointed by CNA Insurance Company Limited, please contact The Claim Director at the 'Claims notification' address set out in the Schedule to the Policy.
3. If you have a complaint relating to a Claim handled by Hardy (Underwriting Agencies) Limited, or a Claim handling agent appointed by Hardy (Underwriting Agencies) Limited, please contact The Claim Director at the 'Claims notification' address set out in the Schedule to the Policy or write to Complaints, Lloyd's Market Services, One Lime Street, London EC3M 7HA. Tel: 020 7327 5693; Fax: 020 7327 5225; E-mail: [complaints@lloyds.com](mailto:complaints@lloyds.com)
4. If you have a complaint about any other aspect of the service you have received from CNA Insurance Company Limited or Hardy (Underwriting Agencies) Limited please contact the Head of Legal & Compliance Services at the '**Insurer's** address' set out in the Schedule to the **Policy**.

## Please provide the following information with your complaint:

- Your Policy number and / or Claim reference number (if applicable);
- Your full name, address and telephone number;
- Details of any previous correspondence relating to the matter;
- The name of any claims handling organisation with whom you have been dealing, and their reference number (if applicable); and
- State the nature and provide full details of your complaint.

You shall receive an acknowledgement within 5 (five) working days of receipt of your complaint, together with a detailed timetable of the actions we shall take to investigate / handle your complaint. In the event the matter is still not resolved to your satisfaction and you wish to pursue matters further, you may be able to refer the matter to The Financial Ombudsman Service (FOS).

The FOS shall become involved if you are an eligible complainant, as defined by the rules of the Financial Conduct Authority.

Eligible complainants are a:

1. private policyholder, or
2. micro enterprise, (that is an enterprise which employs fewer than 10 persons and has a turnover or annual balance sheet that does not exceed EUR 2 million), or
3. charity with a turnover of less than GBP 1 million, or
4. trustee of a trust with an asset value of less than GBP 1 million.
5. The FOS shall only consider a complaint if the **Insured** is an eligible complainant and if:
  6. the **Insurer** has been given an opportunity to deal with the matter; and
  7. the **Insurer** has sent you a final response letter and you have referred your complaint to the FOS within 6 (six) months of the **Insurer's** final response letter, or
  8. the **Insurer** has not responded to your complaint with a decision within eight (8) weeks.

The existence of this Complaint Procedure does not affect any right of legal action you may have against the **Insurer**.

## Financial Ombudsman Service

Contact Details:  
The Financial Ombudsman Service  
Exchange Tower  
London E14 9SR

Telephone: 0800 023 4567 (from a fixed line)  
0300 123 9 123 (from a mobile telephone)  
+44 20 7964 0500 (from outside of the UK)

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)  
Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

## Financial Services Compensation Scheme

CNA Insurance Company Limited and Hardy (Underwriting Agencies) Limited are covered by the Financial Services Compensation Scheme. The **insured** may be entitled to compensation from the Scheme if the **Insurer** is unable to meet its obligations under this contract.

Entitlement to compensation under the Scheme depends on the type of business and circumstances of the claim. Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU or from their website ([www.fscs.org.uk](http://www.fscs.org.uk)).



**Pen**  
underwriting