

## Section 7 - Professional Indemnity

### Definitions and interpretation

For the purposes of this section only

<b>act of terrorism</b>	means an activity that a) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and b) appears to be intended to i) intimidate or coerce a civilian population, or ii) disrupt any segment of the economy of a government de jure or de facto, state or country, or iii) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or iv) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking
<b>bodily injury</b>	means death, injury, illness, disease or shock
<b>documents</b>	means deeds, certificates, papers and business books
<b>employee</b>	means a) any person under a contract of service or apprenticeship with the insured or with some other employer and who is supplied to or hired to or borrowed by the insured b) any labour master or labour only sub-contractor or any person supplied by them c) any self employed person or voluntary helper performing work of a kind ordinarily performed under a contract of service or apprenticeship with the insured provided that such work is under the immediate supervision and control of the insured d) any person who is engaged under a Government or otherwise authorised work experience, training, study, exchange or similar scheme whilst working for the insured in connection with the business
<b>motor vehicle</b>	means mechanically propelled vehicle or plant (or trailer attached thereto) in respect of which insurance or security is necessary to meet the requirements of road traffic legislation
<b>products</b>	means any goods, including containers, packaging, labelling and instructions for use, sold, supplied, processed, delivered, installed, tested, repaired, serviced, altered, treated or hired out by the insured in connection with the business from the premises and no longer in the insured's possession or control.
<b>territorial limits</b>	means Great Britain, Northern Ireland, the Isle of Man or the Channel Islands

### Cover

The Company will indemnify

- a) the insured or
- b) any employee or director of the insured or
- c) any other person, persons, partnership, firm or company acting for or on behalf of the insured against all amounts which the above shall become legally liable to pay as damages and claimants' costs and expenses in respect of claims made and notified during the period of insurance for breach of professional duty by reason of negligence, error or omission happening in connection with the business and occurring within the territorial limits.

### Additional cover

The cover provided by this section is extended to include the following **Claims costs and expenses**

The Company agree to pay all costs and expenses incurred with its written consent in the investigation, defence or settlement of any claim which falls to be dealt with under this section.

### Employee fraud or dishonesty

The Company will indemnify the insured up to the Limit of Indemnity against any loss which the insured shall during the period of insurance first discover that they have sustained, or for which they are legally liable in consequence of fraud or dishonesty of any past or present employee of the insured, or their predecessors in business.

### Special Conditions applicable to this Additional cover extension

- 1 The insured shall as a condition precedent to their right to be indemnified under this extension, give to the Company notice as soon as reasonably practicable
  - a) of the discovery of any loss which gives rise or may give rise to a claim under this extension
  - b) of the discovery of reasonable cause for suspicion of fraud or dishonesty on the part of any past or present employee whether giving rise to a claim under this extension or not.
- 2 The Company shall not be liable under this extension for any acts of fraud or dishonesty committed after the date of such discovery on the part of the person concerned.
- 3
  - a) No indemnity shall be afforded under this extension to any person committing or condoning such fraud or dishonesty.
  - b) In the event of a claim under this extension the insured shall give all necessary information and assistance to the Company.
  - c) Any moneys which but for past or present employees' fraud or dishonesty would have been payable to him by the insured and any moneys of the past or present employee in the hands of the insured shall be deducted from the amount of the insured's loss before a claim is made under this extension.

### Indemnity to other persons

The Company will indemnify at the request of the insured

- a) any director, partner or employee of the insured
- b) any legal representative of any of the above in the event of their death

against legal liability in respect of which the insured would have been entitled to indemnity under this policy if the claim had been made against the insured

Provided that

- i) any person indemnified is not entitled to indemnity under any other insurance
- ii) any person indemnified shall observe, fulfil and be subject to the terms and conditions of this policy as far as they can apply
- iii) the Company will retain the sole conduct and control of any claim
- iv) the maximum liability of the Company in the aggregate for damages to the insured and any such persons shall not exceed the Limit of liability.

#### **Libel and slander**

The Company will indemnify the insured against any claim or claims made against them during the period of insurance for libel or slander committed or alleged to have been committed by:

- a) the insured or
- b) any person at any time employed by the insured in the course of the transaction of the business.

#### **Loss of documents**

If during the period of insurance the insured discover that any documents, the property of or entrusted to or in the custody of the insured or in the custody of any other person to or with whom such documents have been entrusted, lodged or deposited by the insured in the course of the transaction of the business, have been destroyed or damaged or lost or mislaid and after diligent search cannot be found, the Company will indemnify the insured

- a) (i) against legal liability of whatsoever nature which the insured may incur to any other party in consequence of such documents having been so destroyed or damaged or lost or mislaid, and  
(ii) for costs and expenses of whatsoever nature incurred by the insured in replacing or restoring such documents, and
- b) for the insured's own costs and expenses incurred with the consent of the Company in the defence or settlement of any claim to establish liability as described in a) (i) above.

#### **Unintentional breach of confidentiality**

The Company will indemnify the insured in respect of any claim made against them during the period of insurance arising from unintentional breach of confidentiality committed in good faith by the insured or any of the insured's employees in or about the conduct of the business.

#### **Limit of liability**

The Company's liability in respect of

- a) damages
- b) all legal costs recoverable from the insured by any claimant
- c) any other costs and expenses of litigation incurred with the Company's written consent
- d) solicitors' and counsels' fees for legal representation at any coroner's inquest or fatal accident inquiry
- e) the costs incurred, with the Company's written consent, for defending in a Court of Summary Jurisdiction any proceedings arising out of any alleged breach of statutory duty in respect of any cause which may be the subject of indemnity under this section of the policy arising out of and in the course of employment in the business will not exceed the amount stated in the schedule in respect of any one claim against the insured or series of claims against the insured arising out of one cause
- f) costs incurred in the investigation, defence or settlement of any claim under this section for all occurrences giving rise to a claim or a number of claims in any one period of insurance will not exceed the amount stated in the schedule in the aggregate.

#### **Special exclusions**

The Company will not be liable under this section in respect of

- 1 bodily injury sustained by any person arising out of and in the course of their employment by the insured under any contract of service or apprenticeship, or for any breach of any obligation owed by the insured as an employer to any employee
- 2 bodily injury sustained by any person arising from the ownership, possession or use by or on behalf of the insured of
  - i) any aircraft, aerial device, hovercraft, watercraft, caravan or animal
  - ii) any lift, elevator, hoist, crane, steam boiler or other apparatus operating under steam pressure, for which a statutory inspection certificate is required but which is not in force
  - iii) any mechanically propelled vehicle or plant or trailer attached thereto in circumstances in respect of which insurance security is necessary to meet the requirements of road traffic legislation
- 3 liability arising directly or indirectly from any wilful, dishonest, fraudulent, malicious or illegal act or omission of the insured or director of the insured
- 4 liability which
  - a) attaches solely under the terms of any contract or agreement if such liability would not have attached in the absence of such contract or agreement
  - b) arises from the ownership of any building, structure or land
- 5 liability arising out of or relating directly or indirectly to:
  - a) the insolvency of the insured
  - b) the bankruptcy of the insured
  - c) a take-over of the insured
  - d) a merger involving the insured
- 6 fines, penalties or liquidated, punitive, exemplary or multiple damages
- 7 liability arising out of, caused by or relating to products
- 8 alleged infringement of Copyright, Patents, Registered Designs, Trade Marks or Passing-off
- 9 liability arising out of circumstances known to the insured or to any employee of the insured prior to the commencement of the period of insurance
- 10 claims made by any director or partner of the insured or by any other person with a financial interest in the business
- 11 liability arising from or caused by
  - a) neglect, error or omission in any diagnosis or treatment given, performed or administered by the insured or any employee of the insured

- b) wilful, dishonest or fraudulent acts committed by any employee of the insured, other than to the extent of the indemnity provided by Additional cover Employee fraud or dishonesty
- 12 liability arising in circumstances for which the insured or any employee of the insured is entitled to indemnity under any other insurance
- 13 damages for breach of professional duty unless the action is brought against the insured or any employee of the insured in a Court of Law in Great Britain, Northern Ireland, the Isle of Man or the Channel Islands
- 14 liability arising from and or caused by any processes or work in connection with offshore installations

**Definition and interpretation** - for the purpose of this Special exclusion only

- **offshore installation** means any platform or rig or any aircraft or vessel servicing a platform or rig  
- it is understood that any person is deemed to be "offshore" as from the time when they embark onto a conveyance at the point of final departure to an offshore installation and that any person shall continue to be deemed "offshore" until such time as they disembark from any conveyance onto land upon their return from an offshore installation
- 15 liability arising directly or indirectly out of exposure to or inhalation of, or fears of the consequences of exposure to, or inhalation of asbestos
- 16 the cost of cleaning up or removal of, or damage to property arising out of any asbestos
- 17 liability at law for loss, damage, cost or expense of whatsoever nature directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any of the following, or any action taken in controlling, preventing, suppressing, retaliating against or responding to any of the following, regardless of any other cause or event contributing concurrently or in any other sequence of the loss:
- a) war, 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, confiscation by order of any public authority or government de jure or de facto or martial law; or
- b) riots, strikes, or civil commotion; or
- c) any act of terrorism
- If the Company alleges that by reason of this Special exclusion any actual or alleged losses, liabilities, damages, injuries, defence costs, costs or expenses is not covered by this section the burden of proving the contrary shall be upon the insured
- 18 the relevant excess as stated in the schedule
- 19 any claim notified after the insurance has ceased
- 20 libel or slander arising out of publication made in any journal, magazine or newspaper or by means of radio and/or television.

**Special conditions**

- 1 It is a condition precedent to the liability of the Company under this section that the insured shall not admit liability for, or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of the Company who shall be entitled to take over and conduct in the name of the insured the defence or settlement of any claim.
- 2 The insured shall not be required to contest any legal proceedings unless a Counsel to be mutually agreed upon by the insured and the Company shall advise that such proceedings should be contested.
- 3 The insured shall be entitled at their own risk to contest any claim or legal proceedings which in the opinion of the Company should be compromised or settled provided that the Company shall not be liable for any damages, costs or expenses incurred directly or indirectly as a result of the insured's refusal to compromise or settle such claim or legal proceedings.
- 4 It is a condition precedent to the liability of the Company under this section that the insured shall give to the Company immediate notice in writing during the period of insurance of:-
- a) any claim made against any insured; or
- b) the receipt of notice from any person or entity of their intention to make a claim against the insured for the results of any negligent act, error or omission; or
- c) any circumstances of which the insured shall become aware which might reasonably be expected to give rise to a claim being made against the insured, giving reasons for the anticipation of such claim with full particulars as to dates and persons involved. Such notice having been given as required by b) or c) above any subsequent claim made shall be deemed to have been made during the period of insurance.
- 5 In the event of a claim or circumstances that may lead to a claim the insured must not disclose details of this policy to any person without the Company's written consent.
- 6 Where a retroactive date is specified in the schedule, this section will not respond in respect of any claim or claims otherwise falling for indemnity under this section, where the cause of such claim or claims occurred or was alleged to have occurred prior to the said retroactive date.
- 7 The Company agree not to exercise subrogation rights against any director or employee of the insured unless the claim is brought about, or contributed to, by the dishonest, fraudulent, criminal or malicious act or omission of the director or employer.

