

PMR 115

Estate & Letting Agents Endorsement

Definitions

For the purposes of this Endorsement:

FSA 86 means the Financial Services Act 1986

FSMA means the Financial Services and Markets Act 2000

Insurance and investment services means:

1. any activity which is investment business within the meaning in **FSA 86**;
2. any regulated activity within the meaning in **FSMA** even if, by virtue of an order of the Treasury under **FSMA**, the **Insured** is regarded as not carrying on regulated activity by way of business;
3. any activity which, under **FSMA**, constitutes engaging in or communication or inducement to engage in investment activity
4. the provision of or the failure to provide advice in connection with or the arrangement of insurances of whatsoever nature

TPO/NALS award means an award by The Property Ombudsman operating within the Ombudsman's terms of reference or by an arbitrator appointed under the Arbitration Scheme for the National Approved Letting Scheme and operating within the National Approved Letting Scheme Rules.

PMA means the Property Misdescriptions Act 1991

Extensions

Subject otherwise to the terms and conditions of this Policy, **Insurers** agree in addition to indemnify the **Insured** under Section 1:

- A in respect of any legally enforceable **TPO/NALS Award** PROVIDED ALWAYS THAT:
- a) **Insurers** shall not be liable to indemnify the **Insured** in respect of an **TPO/NALS Award** arising from racial or sexual discrimination or a dispute over professional fees; and
 - b) an indemnity would have been provided to the **Insured** under this Policy in respect of the claim or complaint that is the subject matter of the **TPO/NALS Award** notwithstanding the **TPO/NALS Award**; and
 - c) any payment made by **Insurers** under the provisions of this Extension shall be part of and not in addition to the **Indemnity Limit** stated in the Schedule.

The **Excess** shall be GBP 500 in respect of any claim under this Extension clause A

- B in respect of 80% of costs and expenses incurred with **Insurers**' prior written consent in the defence of any proceedings brought against the **Insured** under the **PMA** but only where the **Insurers** believe that defending such proceedings may protect the **Insured** against any subsequent or concurrent civil claim arising from the subject matter of those proceedings and where indemnity would be given under this Policy in respect of any such civil claim.

As a condition precedent to their right to be indemnified under this extension the **Insured** shall inform **Insurers** as soon as possible, and in any event within 5 working days (provided always that such notification is received by **Insurers** before the expiry of the **Period of insurance**) of

- a) the receipt, awareness or discovery of any claim or complaint made against them which might lead to a **TPO/NALS Award**
- b) the receipt of any notice indicating an intention to investigate a possible offence from, or any requirement to deliver up any document to, the relevant enforcement authority under the **PMA**, or any other indication that a prosecution under the **PMA** was imminent.

Such notice having been given any subsequent claim made (including any civil claim arising from the same subject matter of any proceedings under the **PMA**) shall be deemed to have been made during the **Period of insurance**.

Exclusions

Insurers, in addition to the exclusions contained elsewhere in this Policy, shall not be liable to indemnify the **Insured** against any claim or loss arising directly or indirectly out of or in connection with:

- a) the insolvency of any Insurer, Building Society, Bank or other lender;
- b) **Insurance and investment services** regardless of whether or not such **Insurance and investment services** are in contravention of or breach **FSA 86** or **FSMA**;
- c) surveys or valuations other than for the purpose of the establishment of a price for the marketing of a property for sale.

Special Notification Conditions

The **Insured** shall, as a condition precedent to their right to indemnity under Section 1 of this Policy, comply with the Special Notification Conditions below, the **Insurers** only being liable to indemnify the **Insured** in respect of any notification(s) made to the **Insurers** during the **Period of insurance**.

Definition

For the purposes of these Special Notification Conditions, **Adjudication notice** shall mean any adjudication notice pursuant to contract (including a "Notice of Adjudication" and/or "referral notice" pursuant to the Scheme For Construction Contracts (England & Wales) Regulations 1998 and/or The Scheme for Construction Contracts (Scotland) Regulations 1998) and "adjudication" and "adjudicator" shall be construed in that context.

1. The **Insured** shall give the **Insurers** written notice within 2 working days of:
 - a) the receipt of any **Adjudication notice**;
 - b) the receipt of any indication, whether in writing or otherwise, of an intention on the part of any party to serve the **Insured** with an **Adjudication notice**;
 - c) becoming aware of circumstances in which the commencement of an adjudication involving the **Insured** is likely.This notification must be given during the **Period of Insurance** and must be addressed to: HCC International Insurance Company PLC at Walsingham House, 35 Seething Lane, London EC3N 4AH.
2. The **Insured** must promptly supply **Insurers** with all details relating to any references to adjudication, including copies of all documentation made available to the **Insured**.
3. The **Insured** must
 - a) allow the **Insurers** to appoint advisors and to have conduct of the adjudication as they deem appropriate;
 - b) co-operate with the **Insurers** and their advisors in the conduct of the adjudication
 - c) meet any request, direction or timetable of the adjudicator.
 - d) not agree to accept the decision of the adjudicator as finally determining the dispute without the prior written consent of the **Insurers**.
4. The adjudication provisions in the Contract (if any) or otherwise applying to the Contract must:
 - a) provide that the adjudicator must be independent of the parties to the dispute;
 - b) not allow for the adjudicator's decision to finally determine the dispute;
 - c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations;
 - d) not place restrictions upon the timing of the commencement of legal or arbitration proceedings (for the sake of clarity this does not apply to adjudication proceedings).

Further condition

The **Insurers** shall be entitled to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. The **Insured** shall give all such assistance as the **Insurers** may reasonably require in relation to such proceedings or arbitration.

All other terms and conditions of this Policy remain unaltered.