

## Policy Wording – CMS AXA 0410

### **MORTGAGE INTERMEDIARIES PROFESSIONAL INDEMNITY INSURANCE**

- Notes:
1. *You should read this policy carefully and check that it meets your needs. If you have any queries, you should contact the intermediary (if any) through whom you arranged this policy.*
  2. *Requirements for Professional Indemnity Insurance for Mortgage Firms are set out in the Prudential Sourcebook for Mortgage & Home Finance Firms and Insurance Intermediaries (MIPRU 3) published by the FSA. You should check that you comply with the FSA's Rules. No representation or warranty is made by Underwriters or by Collegiate Management Services Ltd. as to whether or not this policy complies with the requirements of the FSA.*
  3. *Various words and phrases have a standard meaning within this policy and such definitions and interpretations are as set out in Section 6. Headings and notes are for information purposes only and are not to be construed as part of the policy wording.*

### **Section 1 - Insuring Clause**

In consideration of the Insured having agreed to pay the premium shown in the Schedule, and in reliance upon all information supplied by the Insured prior to the inception of this policy which is hereby incorporated into the policy and agreed to be the basis of this contract of insurance, Underwriters agree, subject to the Excess and to the other terms, conditions and exclusions of this policy, to indemnify the Insured, up to the Limits of Indemnity, as stated in the Schedule, for: -

#### **1.1 Legal Liability**

Any Claim for compensation and/or damages (including claimant's costs and expenses and Legal Defence Costs where such costs have been incurred with Underwriters' prior written consent) first made against the Insured and notified to Underwriters during the Period of this Policy which the Insured may become legally liable to pay in consequence of:

- 1.1.1 any Negligence in the exercise and conduct of the Insured's Professional Business by the Insured;
- 1.1.2 any libel, slander or defamation by the Insured in the exercise and conduct of the Insured's Professional Business.

#### **1.2 Loss of or Damage to Documents**

In the event of physical loss of or damage to any Documents which are the property of the Insured or in the care, custody or control of the Insured or for which the Insured is legally liable discovered during the Period of this Policy:

- 1.2.1 reasonable and necessary costs and expenses incurred with Underwriters' prior written consent in replacing, restoring or reconstituting any Documents;
- 1.2.2 any legal liability which may arise in consequence of the physical loss of or damage to such Documents.

#### **1.3 Financial Ombudsman Service**

Awards made against the Insured by the Ombudsman appointed under Part XVI Financial Services and Markets Act 2000 under the Ombudsman's compulsory jurisdiction in respect of Claims first made against the Insured and notified to Underwriters during the Period of this Policy to the same extent as if



such awards had been judgments of the courts, provided that Underwriters' maximum liability in respect of any award of the Ombudsman shall be £100,000 (which shall be part of and not in addition to the Limits of Indemnity).

**1.4 Court Attendance Costs**

In the event that Underwriters or their legal representative require the Insured to attend court as a witness or in any other capacity in connection with a Claim notified to, and to which indemnity is granted, under this Policy, the Underwriter agrees to indemnify the Insured at the following rates per day for each day or part of a day for which attendance is required:

1.4.1 for any Partner, Member or Director £300;

1.4.2 for any Employee £150

The sums are not liable to the Excess and the maximum amount payable in total during this policy is £10,000.

**1.5 Unintentional Breach of Copyright**

Any Claim brought against the insured arising out of any unintentional breach of copyright or the unintentional infringement of the systems or designs of others..

**Section 2 – Limits of Indemnity and Excess**

**2.1** Underwriters' maximum liability under all the insuring clauses of this policy in the aggregate inclusive of Legal Defence Costs shall be the Aggregate Limit of Indemnity stated in the Schedule.

**2.2** Underwriters' maximum liability in respect of any Claim or number of Claims arising from or attributable to one originating cause shall be the Single Claim Limit of Indemnity stated in the Schedule. Underwriters will pay Legal Defence Costs in addition to the Single Claim Limit of Indemnity provided that if the amount required to settle any Claim is more than the Single Claim Limit of Indemnity Underwriters shall only be liable for the proportion of the Legal Defence Costs which the Single Claim Limit of Indemnity bears to the total amount paid or payable to settle the Claim. The liability of Underwriters in respect of all Claims and Legal Defence Costs shall not however exceed the Aggregate Limit of Indemnity in any one Period of this Policy.

**2.3** The Insured shall pay the Excess shown in the Schedule which shall be the first amount of each and every Claim by each and every claimant, including Legal Defence Costs. Underwriters' liability shall only be in excess of this sum.

**Section 3 - Claims Conditions**

The following claims conditions and the more general conditions listed under Section 4 apply to this policy:-

**3.1** **Conditions 3.2 to 3.4 below are conditions precedent to any liability of Underwriters under this policy.**

**Discovery of a Claim or Circumstance.**

**3.2** a) If during the Period of this Policy the Insured shall receive any Claim or discover any loss of Documents; the Insured shall give immediate written notice to Underwriters.



- b) If during the Period of this Policy the Insured shall discover any Circumstance, the Insured shall give immediate written notice to Underwriters (in any event within 30 days of discovery and not later than expiry of the Period of this Policy) supplying full particulars of the name of the potential claimant, the date of the Insured's Negligence, the amount of the likely Claim, the Insured's Negligence, the name of the person who committed the relevant act, error or omission on behalf of the Insured and such further information as Underwriters may require.

Underwriters agree that any such Circumstance provided it has been notified to them in accordance with the preceding paragraph and which subsequently gives rise to a Claim after expiry of this policy shall be deemed to be a Claim first made during the Period of this Policy.

- c) If the Insured first receives a Claim or becomes aware of a Loss of Documents or any Circumstance in the seven days prior to expiry of the Period of this Policy, notification of a Claim or Circumstance within seven days after expiry will be considered as notification within the period of this policy in which you first became aware of the Claim. Notification of the claim any later than seven days after expiry of the Policy Period will not be accepted as a Claim under the policy.

### **Conduct of Claims**

- 3.3** In the event of a Claim or the discovery of any Circumstance, the Insured shall not admit liability and no admission, offer, promise or payment shall be made by the Insured without Underwriters' prior written consent.
- 3.4** Following notification of a Claim or notification of any Circumstance, Underwriters shall be entitled if they so desire to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured shall give all such assistance as Underwriters may reasonably require and if any Claim is settled the Insured shall forthwith pay the Excess. If Underwriters make any payment which is the responsibility of the Insured by reason of the Excess, the Insured shall forthwith reimburse such sum to Underwriters and Underwriters may set-off such sum against any other monies payable by them under this policy.

### **Claim Settlements**

- 3.5** Underwriters may at any time pay to the Insured in connection with any Claim or series of Claims under this policy the Limit of Indemnity (less any sums already paid) or any lesser sum for which such Claim or Claims can be settled, and upon such payment Underwriters shall not be under any further liability in respect of such Claim or Claims except for costs and expenses incurred prior to such payment.

### **Misleading information**

- 3.6** In the event of Underwriters at any time being entitled to avoid this policy ab initio by reason of any materially inaccurate or misleading information given to Underwriters in the written proposal form or at any time during the negotiations leading to the inception of this policy or as a result of failure to disclose material facts before the inception of this policy or for any other reason, Underwriters may at their election and in their absolute discretion instead of avoiding this policy ab initio give notice to the Insured that they regard this policy as being in full force and effect except that there shall be excluded from the indemnity provided hereunder any Claim which has arisen or which may



arise out of any circumstance which ought to have been disclosed to Underwriters in the written proposal or which arises out of materially inaccurate or misleading information given to Underwriters.

#### **Section 4 - General Conditions**

The following general conditions apply to this policy:-

##### **4.1 Other Insurance or Indemnity**

If the Insured is, or but for the existence of this policy would be, entitled to indemnity under any other policy or policies or other indemnity arrangements, Underwriters shall not be liable except in respect of any sum in excess of the amount which is or which would have been payable under such other policy or policies.

##### **4.2 Subrogation**

Following notification of a Claim or notification of any Circumstance, the Insured grants to Underwriters all rights of recovery against any parties from whom a recovery may be made. However, Underwriters agree to waive any rights of recovery against any Employee or consultant or former Employee or former consultant of the Insured unless liability has resulted in whole or part from any act or omission on the part of such person which is dishonest, fraudulent, criminal or malicious or where such person had or was required to have any other insurance or indemnity arrangements.

##### **4.3 Governing Law**

This contract is governed by Laws of England and Wales.

##### **4.4 Contracts (Rights of Third Parties) Act 1999**

The parties to this contract are Underwriters and the Insured. A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy which exists or is available apart from that Act.

##### **4.5 Authorisation and notices**

The Insured named first in the Schedule is hereby authorised to act on behalf of all other Insureds for all purposes under and in connection with this policy, including the giving and receiving of all notices and the amendment of any terms and conditions of this policy.

##### **4.6 Cancellation**

- a) This policy is cancelled immediately in the event of the Insured's Part IV permission under the Financial Services and Markets Act being suspended or revoked or the Insured being declared in default by the Financial Services Compensation Scheme. Upon cancellation Underwriters shall return the unearned premium for the remainder of the Period of this Policy calculated pro rata on a daily basis provided there shall be no return of premium if the Insured have notified any Claim or Circumstance.
- b) If the premium has not been paid by the 30<sup>th</sup> day from the month end of inception of the insurance policy or, if paying by instalments, any other date specified, Underwriters may at our discretion cancel the insurance policy from inception.



## **Section 5 - Exclusions**

### **5.1 This policy shall not indemnify the Insured in respect of the following:-**

- a) Circumstances Known at inception**  
Any Claim arising from any Circumstance of which the Insured was aware or ought reasonably to have been aware at any time prior to the inception of this policy, whether notified under any other insurance or not.
- b) Prior policies**  
Any Claim notified under any policy of insurance held by the Insured in force prior to the inception of this policy.
- c) Fraud, Dishonesty & Criminal Acts**  
Any Claim:
  - (i) directly or indirectly contributed to or caused by any dishonest, fraudulent, criminal or malicious act or omission of any Employee, principal, partner or director of the Insured or anyone under a contract of or for service with any Insured;
  - (ii) from any Insured arising from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission committed or condoned by that Insured;
- d) Financial Institution**  
Any Claim made or controlled by a Financial Institution.
- e) Commercial Insurance**  
Any claim arising directly or indirectly from, consequent upon, or in any way relating to any advice or services provided with regards to Commercial Insurance
- f) Payment Protection Insurance (PPI)**  
Any claim arising directly or indirectly from, consequent upon, or in any way relating to any advice or services provided with regards to Payment Protection Insurance
- g) Death or Bodily Injury or Loss or Damage to Property**  
Any Claim for death or bodily injury or for loss of or damage to any tangible property (except Loss of Documents insured under Insuring Clause 1.2) or loss of use thereof except where such loss or damage arises directly out of professional advice provided by the Insured.  
  
Any Claim arising solely out of the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.



- h) Liability arising out of Employment**  
Any Claim arising out of injury, disease, illness or death of any Employee or any Claim arising out of any dispute between the Insured and any present or former Employee or any applicant for employment being brought under or relating to the Employment Rights Act 1996 or equivalent legislation in countries other than England or brought under the express or implied terms of that Employee's contract of employment.
- i) Supply of Goods**  
Any Claim against the Insured arising out of the supply by the Insured of any goods or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by the Insured.
- The exercise and conduct of the Insured's Professional Business shall not be excluded by this exclusion even where the exercise and conduct of such Professional Business is held to be a "product" or "goods" in consequence of the Consumer Protection Act 1987 or equivalent legislation in countries other than England.
- j) Regulatory Expenses**  
Any costs and expenses incurred by the Insured in meeting any regulatory requirement or responsibility other than Legal Defence Costs in respect of a Claim.
- k) Loss of Documents – Magnetic or Electrical Media**  
Any Claim arising from the physical loss of or damage to Documents which are stored on magnetic or electrical media unless such Documents are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.
- l) Cyber Liability**  
Any claim, loss, liability or expense arising directly or indirectly out of: -  
(a) corruption, erasure, theft, alteration of, or  
(b) access or lack of access to, or  
(c) interference with  
any electronically held data of the Insured wholly or partly caused by any computer virus or by any person who is not a Principal, Partner, Director or Employee of the Insured.
- m) Directors' and Officers' Liability**  
Any Claim arising from those liabilities consequent upon being a director, officer or trustee of the Insured (as opposed to those duties and functions carried out in furtherance of the Insured's Professional Business) or from the acceptance of any directorship or trusteeship in any other company.
- n) Jurisdiction and Territorial Limits**  
Any Claim brought outside the United Kingdom or arising from any act or omission done outside the United Kingdom or any proceedings for the enforcement of any judgment or award made outside the United Kingdom.
- o) Punitive, Penal or Exemplary Damages**  
Any punitive, penal or exemplary damages whatsoever or any fines or penalties or Legal Defence Costs incurred in proceedings for fines, penalties, punitive or exemplary damages
- p) Retroactive Date**



Any Claim arising from professional business undertaken prior to the retroactive date (if any) specified in the schedule, or if none specified prior to the date of the commencement of trading as declared by the Insured to Underwriters on the proposal for insurance.

**q) Appointed Representatives and Employees**

Any Claim:

- (i) against the Insured in respect of any act or omission by any Appointed Representative not named in the Schedule;
- (ii) against the Insured or against any Employee or Appointed Representative of the Insured in respect of any act or omission done prior to becoming or after ceasing to be an Employee or Appointed Representative of the Insured named first in the Schedule.

**r) Controlling Interest Exclusion Clause**

Any Claim made against any Insured by:-

- (i) any other Insured;
- (ii) any entity in which the Insured exercises a controlling interest; or
- (iii) any entity exercising a controlling interest over the Insured by virtue of their having a financial or executive interest in the operation of the Insured

unless such claim is made against the Insured for an indemnity or contribution in respect of a Claim first made by an independent third party.

**s) Nuclear Risks**

Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:-

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**t) Pollution**

Any Claim;

- a) for personal injury, bodily injury, sickness (including mental stress). loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination or;
- b) for the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.

**u) War and Terrorism**

Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.





For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also extends to loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **Section 6 - Definitions and Interpretations**

The following words and phrases are used in this policy. In certain instances the words may be used in their plural or singular form. Whenever they appear they are deemed to have the meaning set out below:-

### **6.1 Appointed Representative**

Shall have the meaning given by section 39 Financial Services and Markets Act 2000.

### **6.2 Bodily Injury**

Shall mean death and injury, illness or disease whether bodily or mental.

### **6.3 Circumstance**

Shall mean information discovered by the Insured which suggests that a Claim by an identified claimant is more likely than not to be made against the Insured. Such information does not constitute a circumstance merely because the Insured has sold or advised in relation to a product or class of investment that is the subject of adverse press comment or regulatory investigation.

### **6.4 Claim**

Shall mean:-

- (i) any demand for compensation and/or damages or assertion of a right against the Insured which is communicated by a claimant to the Insured; or
- (ii) any complaint required to be dealt with under the *Dispute Resolution: Complaints* section of the FSA Handbook.

### **6.5 Documents**

Shall mean deeds, wills, agreements, records, written or printed books, letters, certificates or written or printed documents and/or forms of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this policy). This definition excludes bearer bonds, coupons, bank or currency notes or other negotiable paper.

### **6.6 Employee**

Shall mean a person employed by the Insured under a contract, whose remuneration is subject to deductions of tax under the PAYE system. Self-employed or contract hire persons engaged by the Insured and acting under





the control and management of the Insured in connection with the Insured's Professional Business shall be deemed to be employees for all purposes of this policy.

**6.7 Financial Institution**

An institution that provides financial services for its clients or members including but not limited to a private, public or institutional entity which makes funds available to others to borrow. This includes banks, building societies and other lending institutions.

**6.8 Insured**

Shall mean:-

- a) (i) The Professional Practice[s] whether corporate, sole trader or partnership named in the Schedule;
- (ii) The present, former or future partners and present or future directors of such Practice;
- b) the Employees or former Employees of such Practice;
- c) the estate, heirs, executors and assigns in bankruptcy of those parties mentioned in sub-paragraph (a) of this definition;
- d) the Appointed Representatives named in the Schedule.

**6.7 Legal Defence Costs**

Shall mean all external legal defence costs and expenses incurred by or on behalf of the Insured with Underwriters' prior written consent in the investigation, defence or settlement of any Claim or potential Claim. Legal Defence Costs do not include salaries, remuneration costs and expenses of the Insured or the Insured's own staff.

**6.8 Material Fact**

A fact material to the underwriting of the policy in that it affects whether insurance would have been offered or the terms of the insurance offered

**6.9 Negligence**

Shall mean a negligent act, a negligent error or a negligent omission.

**6.10 Non investment insurance arrangement**

Shall mean the sale of regulated non investment personal lines insurance not purchased for any business, profession or trade

**6.11 Period of this Policy**

Shall mean the period shown in the Schedule plus any extension to the period which may be granted by Underwriters.

**6.12 Professional Business**

Shall mean the business activities which are listed in the Proposal.

**6.13 Underwriters**

Shall mean those insurance companies or Lloyd's syndicates subscribing to this policy and detailed in the attachment to this policy. Underwriters' obligations under this contract are several and not joint and are limited solely to the extent of their individual proportions as set out in the attachment to this policy. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of their obligations.

**6.14 United Kingdom**

Shall mean the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.



**Notice to the Proposer/Insured.****E.U. Disclosure Clause (U.K.):**

The parties are free to choose the law applicable to this insurance contract. Unless specifically agreed to the contrary this insurance shall be subject to the Laws of England and Wales.

**Complaints procedure**

Any enquiry or complaint should be addressed in the first instance to any intermediary through whom you arranged this policy.

If you are not satisfied with the way a complaint has been dealt with you may ask the Complaints Department at Axa to review your case without prejudice to your rights in law.

The Address is:

Telephone

You may also, in accordance with the Rules of the Financial Services Authority, be able to refer a complaint to the Financial Ombudsman Service.

