

**DIVE MASTER
NOVAE SYNDICATE 2007
DIVE TRADE LIABILITY INSURANCE
(INDIGO)**

The Policy, Schedule and Endorsements should be read as if they were one document and if they do not meet your needs please return them to the **Insurer**

Preamble

This Policy is the evidence of the contract between the **Insured** and the **Insurer** and any **Proposal** being the basis of the contract is deemed to be incorporated herein

The **Insurer** will insure in the manner and to the extent provided during any Period of Insurance for which the **Insured** has paid the premium subject to the terms conditions and exclusions of the Policy

Several Liability Notice

The subscribing **Insurer's** obligations under policies to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing **Insurer's** are not responsible for the subscription of any co-subscribing **Insurer** who for any reason does not satisfy all or part of its obligations

1. OPERATIVE CLAUSE

The **Insurer** will indemnify the **Insured** against their legal liability as defined by each insured Section of this Policy as set out in the Schedule arising out of **Recreational Watersports Services** to pay compensatory damages (including claimants costs fees and expenses) in accordance with the law of any country subject always to the terms conditions and exclusions of such Section and of the Policy as a whole

PROVIDED THAT this Policy shall not indemnify the **Insured** in respect of any judgement award or settlement made within countries which operate under the laws of the United States of America or Canada (or any order made anywhere in the world to enforce such judgement award or settlement either in whole or in part

2. DEFINITIONS

For the purpose of this Policy:

- (a) **Insured** means
 - (i) the person persons or corporate body named in the Schedule
 - (ii) subsidiary companies of the **Insured** notified to and accepted in writing by the **Insurer**
- (b) **Insurer** means Novae Syndicate 2007 and/or any subscribing underwriters
- (c) **Recreational Watersports Services** means the organisation of, supervision of and or the provision of advice or instruction in recreational snorkel and/ or sports diving, and in ancillary social, recreational and promotional activities or special interest diving agreed by the **Insurer** or as more specifically described in the Schedule attached to and forming part of this policy and agreed by the **Insurer**.
- (d) **Damage** means accidental loss of possession of or accidental damage to tangible property
- (e) **Excess** means the amount of the **Insured's** retained liability arising out of one **Occurrence** or series of **Occurrences** consequent on one original cause (The **Insurer** shall only be liable to the extent that any liability exceeds the **Excess**)
- (f) **Financial Loss** means any pecuniary loss unaccompanied by **Injury** or **Damage**
- (g) **Injury** means death bodily injury illness or disease of or to any person
- (h) **Insured Territories** means World Wide excluding USA and Canada, their territories and possessions
- (i) **Occurrence** means an accident including continuous or repeated exposure to substantially the same general conditions which results in **Injury** or **Damage** neither expected nor intended by the Assured

- (j) **Person Employed** means any
 - (i) employee under a contract of service or apprenticeship with the **Insured**
 - (ii) labour master and persons supplied by him
 - (iii) labour only sub-contractors
 - (iv) self employed person working for and under the control of the **Insured**
 - (v) person hired or borrowed by the **Insured**
 - (vi) person undertaking study or work experience or youth training scheme with the **Insured**
 - (vii) voluntary workers or volunteers whilst working on behalf of the **Insured** in connection with **Recreational Watersports Services**
- (k) **Product** means any tangible property after it has left the custody or control of the **Insured** which has been designed specified formulated manufactured constructed installed erected sold hired out supplied distributed treated processed serviced altered or repaired by or on behalf of the **Insured** in connection with **Recreational Watersports Services**
- (l) **Proposal** means any information provided or declaration made by the **Insured** in connection with the Policy whether by means of a formal proposal or otherwise
- (m) **Participant** means any person engaged in the **Insured's** activities, social and/or promotional events or whilst under the active supervision or instruction of the **Insured** during **Recreational Watersports Services**.
- (n) **Property** means tangible property

3. INDEMNITY TO OTHERS

If the **Insured** so requests and it is agreed by **Insurer's** the indemnity granted extends to

- (a) Directors Officers Employees and Partners of the **Insured** in their business capacity arising out of the performance of **Recreational Watersports Services**
- (b) the officers committee and members of the **Insured's** canteen social sports medical fire fighting and welfare organisations in their respective capacity as such
- (c) any person or firm arising out of the performance of a contract with the **Insured** constituting the provision of labour only
- (d) any Principal for 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** arising out of work carried out by the **Insured** under a contract or agreement
- (e) the personal representatives of any person or party indemnified by reason of this Clause 3 in respect of legal liability incurred by such person

Provided always that all such persons or parties shall observe fulfil and be subject to the terms, conditions and exclusions of this Policy as though they were the **Insured**

4. INDEMNITY LIMITS

- (a) SECTION A – **Insurer's** total liability to pay damages and or claimants costs fees and expenses shall not exceed the sum stated in the Schedule in respect of any one claim against the **Insured** or series of claims against the **Insured** arising out of one **Occurrence**
- (b) SECTIONS B AND C – **Insurer's** total liability to pay damages and/or claimants costs fees and expenses shall not exceed the sum stated in the Schedule against each Section in respect of any one **Occurrence** or series of **Occurrences** arising from one originating cause but under Section C the limit applies to the total amount of damages and/or claimants costs fees and expenses payable in respect of all losses occurring during the Period of Insurance

5. DEFENCE COSTS

The **Insurer** will also pay all costs fees and expenses incurred with their prior consent by the **Insured** in the defence or settlement of any claim under this Policy (hereinafter called "Defence Costs")

Defence Costs include legal expenses

- (a) incurred by or awarded against the **Insured** arising out of any prosecution of the **Insured** for breach or alleged breach of Part 1 of the United Kingdom Health & Safety at Work Act 1974 (and / or any legislation of similar effect) provided that the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution
- (b) arising out of representation of any Coroner's Inquest or Fatal Accident Inquiry
- (c) arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Policy

Defence Costs will be payable in addition to the Indemnity Limits except in respect of Section A when the Indemnity Limit will be inclusive of Defence Costs unless this Policy is specifically endorsed to the contrary

SECTION A – EMPLOYERS LIABILITY

6. SECTION A – INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Operative Clause, but only for **Injury** to any **Person Employed** where such **Injury** arises out of and in the course of employment by the **Insured** and occurs during the Period of Insurance either

- (a) in Great Britain Northern Ireland the Isle of Man or the Channel Islands
- (b) elsewhere in the world in respect of temporary visits by **Persons Employed** normally resident in the territories specified in Sub-section (a) above

PROVIDED THAT

- i) the action for damages is brought against the **Insured** in a court of Law in Great Britain Northern Ireland the Isle of Man or the Channel Islands
- ii) the **Insurer** will not be liable in respect of
 - any amount payable under any workman's compensation, social security or health insurance legislation or similar legislation
 - any medical and/or repatriation costs

7. SECTION A – EXCLUSIONS

This Section shall not apply to liability

- (a) incurred in circumstances where any road traffic legislation requires compulsory insurance or security
- (b) arising out of work on and/or visits to any offshore rig and/or installation and/or platform from the time of embarkation onto a conveyance at the point of final departure to such offshore rig and/or installation and/or platform until disembarkation from the conveyance from such offshore rig and/or installation and/or platform onto land

8. EMPLOYERS LIABILITY COMPULSORY INSURANCE CLAUSE

The indemnity granted by this Section is deemed to be in accordance with the provisions of any law enacted in Great Britain Northern Ireland the Isle of Man or the Channel Islands relating to compulsory insurance of liability to employees

If however, there has been non observance of any Policy conditions by the **Insured** and the **Insurer** shall have paid any sum which would not have been paid but for the provisions of such law then the **Insured** shall within 14 days repay such sum to the **Insurer**

SECTION B – PUBLIC LIABILITY

9. SECTION B – INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Operative Clause for and/or arising out of accidental **Injury** and/or **Damage** occurring during the Period of Insurance within

(a) **Insured Territories**

- (b) The rest of the world in respect of liability arising out of temporary visits by **Persons Employed**, provided that the **Person Employed** is normally resident in the **Insured Territories**

10. SECTION B – EXCLUSIONS

This Section does not cover liability for

- (a) claims for which indemnity is afforded by Sections A and C whether or not such Sections are insured by this Policy
- (b) claims arising out of the ownership possession or use by or on behalf of the **Insured** or any person or party entitled to indemnity of any motor vehicle or trailer for which compulsory insurance or security is required by legislation, other than claims
- (i) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer in circumstances where compulsory insurance or security is not required by any road traffic legislation
 - (ii) arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer except where indemnity is provided by any motor insurance contract
 - (iii) arising out of any motor vehicle or trailer temporarily in the **Insured's** custody or control for the purpose of parking except liability for which compulsory insurance or security is required by legislation governing the use of any motor vehicle or trailer
- (c) damage to property owned leased to hired by under hire purchase on loan to held in trust by or otherwise in the **Insured's** care custody or control.

SECTION C – PRODUCTS LIABILITY

11. SECTION C – INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Operative Clause in respect of legal liability arising out of accidental **Injury** and/or **Damage** occurring during the Period of Insurance but only against claims arising out of or in connection with any **Product**

12. SECTION C – EXCLUSIONS

This Section does not cover liability for claims

- (a) falling within the scope of cover set out in Section A and B whether or not such Sections are insured by this Policy
- (b) for costs incurred in the repair reconditioning or replacement of any **Product** or part thereof which is alleged to be defective
- (c) arising out of the recall of any **Product** or part thereof
- (d) arising out of any **Product** which with the **Insured's** knowledge is intended for incorporation into the structure machinery or controls of any aircraft other aerial device hovercraft or offshore rig and/or installation and/or platform
- (e) arising out of any **Product** which the **Insured** knows or should reasonably know is to be delivered or used in the United States of America or Canada or any territory which operates under the laws of the United States of America or Canada unless the **Insured** has requested that there shall be no such limitation and has accepted the terms offered by **Insurers** in granting such cover, which offer and acceptance must be signified by specific endorsement to this Policy

- (f) arising by virtue of a contract or agreement but which would not have arisen in the absence of such contract or agreement
- (g) arising out of the failure of any **Product** or part thereof to fulfil the purpose for which it was intended unless due to an unintended and unexpected defect in the manufacture and/or assembly of such **Product** or part thereof
- (h) arising from circumstances known to the **Insured** prior to the inception date of this Policy

13. EXCLUSIONS APPLICABLE TO SECTIONS B AND C

Sections B and C do not cover liability for claims

- (a) arising out of the deliberate conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**
- (b) arising out of liquidated damages clauses penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties
- (c) arising out of pollution or contamination of the atmosphere or of any water land buildings or other tangible property except to the extent that it can be proved that such pollution or contamination
 - (i) was the direct result of a sudden identifiable unintended and unexpected incident occurring in its entirety at a specific time and place during the Period of this Policy
 - (ii) was not the direct result of the **Insured** failing to take reasonable precautions to prevent such pollution or contamination

provided always that **Insurer's** total liability to pay compensation and/or claimants' costs fees and expenses under this clause shall not exceed the sum stated in the Schedule in the aggregate in respect of the Period of Insurance and that all such pollution or contamination which arises out of one incident shall be considered for the purposes of this Policy to have occurred at the time such incident takes place

- (d) directly or indirectly occasioned by happening through or in consequence of war invasion act of foreign enemy hostilities (whether war be or declared or not) civil war rebellion revolution insurrection or military or usurped power
- (e) directly or indirectly arising out of or relating to
 - (i) the recognition interpretation failure to recognise or interpret or calculation comparison differentiation sequencing or processing of data involving one or more dates or times by any computer system hardware programme or software or any microchip integrated circuit or similar device in computer or non-computer equipment whether the property of the **Insured** or not or
 - (ii) any change alteration correction or modification involving one or more dates or times to any such computer system hardware programme or software or any microchip integrated circuit or similar device in computer or non-computer equipment whether the property of the **Insured** or not

This exclusion shall apply regardless of any other cause which contributes concurrently or in any sequence to such loss **Damage** expense liability or claim

- (f) arising from or caused by design formula specification technical or professional service given for a fee by the **Insured** or anyone acting on behalf of the **Insured**
- (g) arising in respect of liability for **Financial Loss**

14. EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

This Policy does not cover liability

- (a) 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

Provided that in respect of claims arising out of **Injury** which form the subject of Indemnity under Section A this Exclusion shall only apply to liability

- (i) of any party to whom Indemnity is granted under Clause 3(d) (or their personal representatives)
 - (ii) assumed by the **Insured** by agreement which would not have attached in the absence of such agreement
- (b) for any award of punitive or exemplary damages whether as fines penalties multiplications or compensatory awards or damages or in any other form whatsoever
- (c) arising from **Injury** or **Damage** cost or expense of whatsoever nature directly or indirectly caused by resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss

For the purpose of this Exclusion an Act of Terrorism means an act including but not limited to the use of 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 excludes **Injury** or **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 any Act of Terrorism

If the **Insurer** alleges that by reason of this Exclusion any **Injury** or **Damage** cost or expense is not covered by this policy the burden of proving to 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

- (d) arising from or in any way related to asbestos or asbestos fibres including but not limited to **Injury** or **Damage** directly or indirectly caused by asbestos or asbestos fibres or any commodity article or thing containing asbestos or asbestos fibres or the cost of removing nullifying or cleaning up asbestos, asbestos fibres or any commodity article or thing containing asbestos or asbestos fibres

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

- (e) arising from commercial diving meaning those diving practices described in the two Health & Safety Executive (HSE) Approved Code of Practice for Inshore Commercial Diving and Offshore Commercial Diving. For the purpose of this definition the Approved Codes of Practice for:
- i. Recreational Scuba Training
 - ii. Scientific & Archaeological Diving
 - iii. Underwater Film & Media work
- are not considered to be commercial diving
- (f) arising from the use of spearguns when used in conjunction with an aqualung

15. **COMPENSATION FOR COURT ATTENDANCE**

In the event of any director partner or employee of the **Insured** attending court as a witness at the request of the **Insurer** in connection with a claim in respect of which the **Insured** is entitled to Indemnity under this Policy the **Insurer** will provide compensation at the following rates for each day on which attendance is required

- (a) any director or partner £250 per day
- (b) any employee £150 per day

Subject to a maximum aggregate limit in the Policy period of £5,000

16. **GENERAL CONDITIONS**

(a) **Policy Voidable**

This Policy shall be voidable in the event of misrepresentation misdescription or non-disclosure in any material particular

(b) Observance

Observance of the terms of this Policy relating to anything to be done or complied with by the **Insured** is a condition precedent to any liability of the **Insurer** except insofar as is necessary to comply with the requirements of any legislation enacted in Great Britain Northern Ireland the Channel Islands or the Isle of Man relating to compulsory insurance of legal liability to employees

(c) Reasonable Precautions

The **Insured** at his own expense shall

- (i) take all reasonable precautions to prevent bodily **Injury** loss of or **Damage** to property and the sale or supply of **Products** which are defective in any way and cease any activity which may give rise to liability under this Policy
- (ii) exercise care in the selection and supervision of **Persons Employed**
- (iii) as soon as possible after discovery cause any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require
- (iv) comply with all statutory requirements and other safety regulations imposed by any authority

(d) Change of Risk

The **Insured** shall give notice to the **Insurer** as soon as possible of any alteration or any change of circumstances which materially affects the risk

(e) Cancellation

The **Insurer** may at any time by giving notice in writing to the **Insured** at the last known address terminate this Policy or any section(s) hereof as from the expiration of such thirty days provided the **Insurer** shall in that event return part of the premium for the unexpired time of the policy or section(s) subject to adjustment under clause 16(j)

(f) Discharge of Liability

The **Insurer** may at any time pay the Indemnity Limit or the sum insured (after the deduction of any sum already paid) or any lesser amount for which a claim can be settled and shall be under no further liability except for the payment of costs and expenses incurred prior to the date of payment provided that the Indemnity Limit so allows

(g) Excess

The **Insurer** shall not be liable for the amount of the **Excess** stated in the Schedule in respect of the first amount of each and every claim

The **Insured** shall not effect insurance in respect of the **Excess**

(h) Interpretation

The Policy and the Schedule shall be read together as one contract

Any word or expression to which a specific meaning has been attached in any Section of this Policy shall bear the same meaning wherever it may appear within that Section

Any reference to

- (i) the singular shall include the plural and vice versa
- (ii) the masculine shall include the feminine and vice versa
- (iii) a statute statutory instrument regulation or order shall include any amendment and/or re-enactment thereof

(i) Warranties

Every warranty shall from the time that the warranty attaches apply and continue to be in force during the whole currency of this Policy Non-compliance with any such warranty insofar as it increases the risk shall be a bar to any claim

(j) Adjustment of premium

If the premium has been calculated on estimates given by the **Insured** the **Insured** shall keep an accurate record containing all relevant particulars which shall be available to the **Insurer** for inspection

Within one month of the expiry of each Period of Insurance the **Insured** shall supply to the **Insurer** an accurate statement in the form required so that the premium for that period can be calculated and the difference paid by or allowed to the **Insured**

Should the **Insured** fail to supply such a statement within one month of the expiry of the Period of Insurance the **Insurer** shall be entitled if they so wish to charge an additional premium in respect of that Period of Insurance

(k) Other Insurances

If an indemnity is or would but for the existence of this Policy be covered by any other insurance the **Insurer** shall not provide indemnity except in respect of any excess beyond the amount which is or would but for the existence of this Policy be payable

(l) Claims procedure

(i) The **Insured** shall give written notice to the **Insurer** of any **Injury** loss or **Damage** or claim or proceeding as soon as reasonably possible and in any event no later than 14 days after the same shall have come to the knowledge of the **Insured** or any representative of the **Insured**

(ii) The **Insured** shall not admit liability for or negotiate the settlement of any claim without the prior written consent of the **Insurer** who shall be entitled to conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** may require

(m) Fraud

If any claim is in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on behalf of the **Insured** or if any **Injury** or **Damage** is caused by the wilful act or with the connivance of the **Insured** all benefit under this Policy shall be forfeited

(n) Governing Law and Jurisdiction

This Policy shall be governed in all respects by English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts with respect to any dispute or difference arising hereunder

(o) Cross Liabilities

Where there is more than one party named as the **Insured** in the Schedule this Policy will apply separately to each such **Insured** in the same manner and to the same extent as if a separate policy had been issued to each **Insured** and the **Insurer** agrees to waive all rights of subrogation against any of these parties

Provided that the total amount payable in respect of compensation does not exceed the Indemnity Limit

(p) Data Protection Act 1998

It is agreed by the **Insured** that any information provided to the **Insurers** regarding the **Insured** will be processed by the **Insurer** in compliance with the provisions of the Data Protection Act 1998, for the providing of insurance and handling of claims if any which may necessitate providing such information to third parties

(q) The Contract (Rights of Third Parties) Act 1999

No rights to enforce any term of this Policy under the Contracts (Rights of Third Parties) Act 1999 are given to any person who is not a party to this Policy but this does not affect any right or remedy of any such person that arises apart from that Act

(r) Premium Payment

It is warranted that all Premiums due to the **Insurer** under this Policy are paid within 60 days from Inception

Non-receipt by the **Insurer** of such Premiums by Midnight of the Premium Due date shall render this Insurance Policy void with effect from Inception

(s) Subrogation

If any payment is made under this Policy in respect of a claim or loss and there is available to **Insurer's** any of the **Insured's** rights of recovery against any other party then **Insurer's** maintain all such rights of recovery

Insurer's shall not exercise those rights against any past present or future employee director or partner of the company named as the **Insured** in the Schedule or any subsidiary unless such payment is in respect of any wilful malicious or dishonest acts or omissions

The **Insured** must do nothing to impair any rights of recovery

At **Insurer's** request the **Insured** will bring proceedings to transfer those rights to **Insurer's** and help Insurers to enforce them

Any recovery shall be applied as follows

- (a) first to **Insurer's** up to the amount of **Insurer's** payment in respect of compensation and defence costs and expenses
- (b) then to the **Insured** as recovery of the **Insured's** excess or other amount paid as compensation or costs and expenses

(t) Policyholder Complaints

Unless specifically agreed to the contrary this insurance shall be subject to English Law

Any enquiry or complaint should be addressed in the first instance to Dive Master Insurance Consultants Ltd at 17-23 Rectory Grove Leigh on Sea Essex SS9 2HA

If following the above procedure your complaint has not been resolved you should write to

The Chief Executive
Novae Syndicate 2007
71 Fenchurch Street
London
EC3M 4HH

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

The address is
Complaints Department
Lloyd's
One Lime Street
London
EC3M 7HA