



333 South Wabash Avenue, Chicago, Illinois 60604

Representative Vendor Contract Terms & Conditions

(updated as of August, 2013)

These terms and conditions (“*Terms*”) are representative of the terms and conditions CNA requires as part of any agreement (“*Agreement*”) between Continental Casualty Company (“*CNA*”) and a vendor (“*Vendor*”). These Terms are provided for representative purposes only, and do not constitute an offer.

1. Expense Reimbursement. Reimbursement for travel expenses may only occur if the travel is approved in advance by the designated CNA contact point, original receipts/electronic itineraries for e-tickets are provided and the expenses are reasonable and necessary and comply with the provisions of this Section 1. Vendor shall use good faith efforts to minimize expenses (*e.g.*, bus and airport limousines should be used when available, taxis should be used when cost is less than rental car, booking via CNA’s electronic tool for any South Dakota work, etc.). Standard policy is as follows: air travel – economy class; rail travel – coach; rental car – intermediate/mid-sized models (any trips beyond 250 miles 1 way should be by air travel); personal auto – standard mileage rate for business issued by the Internal Revenue Service, rounded down to the nearest whole cent, plus tolls and parking at actual cost; and lodging – single room at commercial rate. Reimbursement for meals is not permitted unless an overnight stay is required, in which case the maximum reimbursement for all food and beverage is \$25. For any longer duration trips, the maximum reimbursement for all food and beverage (including tips and room service fees) is \$35 per day. Total expenses for any weekends must be less than the cost of returning home. Notwithstanding anything to the contrary, no reimbursement is permitted for lost personal property, trip insurance, personal expenses such as barber or shoe shining, political contributions, maintenance and repair of personal car, entertainment/amusements, fines/court costs, hotel amenities, medical expenses, all costs while in home area, restaurant tips higher than 15% of the total check, bellhop/skycap tips higher than \$1/bag, personal telephone calls in excess of 1 brief call per day (unless emergency) and laundry/valet (unless emergency or out of town for more than a week). Submission of all receipts should be considered standard. Receipts must be present for all air, rail, hotel, rental cars, and any other expenditures of \$25 or greater. Receipts are required for all meals regardless of amount.

2. Invoicing. Vendor shall submit an invoice CNA upon completion of the prior thirty (30) days of Services and no later than sixty (60) days following the completion of Services referenced on the applicable invoice, which invoice shall include receipts and other documentation sufficient to support itemized charges and shall reference: (a) the Agreement by contract number; (b) the name of the CNA contact; and (c) the billable CNA cost center (only one cost center per invoice). Vendor shall submit invoices in .pdf or .doc format via email to Invoices@cna.com. If Vendor is unable to submit invoices electronically, invoices shall be addressed to CNA Accounts Payable – 23rd Floor, P.O. Box 2944, Chicago, Illinois 60690-2944. Within sixty (60) days after receipt of an invoice, CNA shall either remit payment for the invoice or send written notice to Vendor advising of CNA’s reasons for withholding payment. If CNA pays the undisputed amount on any invoice (x) within ten (10) days of receipt, the amount shall be subject to a two percent (2%) discount, or (y) within fifteen (15) days of receipt, the amount shall be subject to a one percent (1%) discount. If CNA disputes an invoice, CNA shall remit the amount CNA determines is properly due in accordance with this section and the parties shall use their best efforts to resolve such dispute as soon as possible. Notwithstanding anything to the contrary, holdbacks from Vendor’s invoices may be made if CNA reasonably believes that Vendor has failed to substantially perform matters or incur expenses included within the submitted invoice. In order to receive payment electronically via Automated Clearing House (ACH), Vendor shall complete

and submit the ACH Authorization Form located on the Supplier Management and Registration page at <http://www.cna.com>.

3. *Audit.* CNA or its authorized representative shall have the right to examine, audit and review the business operations, documents, financial statements, systems, and records of Vendor that pertain to the Services to be provided under this Agreement at any location of Vendor providing Services to CNA under this Agreement or at any mutually acceptable location, to (a) determine the accuracy of Vendor's invoices to CNA, and/or (b) confirm and assure Vendor's compliance with the terms and conditions of this Agreement. Vendor agrees to maintain at all times during the term of this Agreement financial statements and business records related to this Agreement in form consistent with the industry practice and continuing for a period of not less than five (5) years from the expiration or termination of this Agreement. All files, data, information and records received from CNA shall at all times be maintained and made easily accessible to CNA in the event that CNA shall at any time during the term of this Agreement exercise its audit rights.

4. *Vendor Representations and Warranties.* Vendor represents and warrants to CNA that: (a) it will perform the Services in a timely, workmanlike and professional manner and in accordance with the terms of the Agreement and all applicable professional standards and practices; (b) no product or material provided by Vendor hereunder and no electronic messages, connections, data and communications (in whatever form) provided or utilized by Vendor will contain any virus, time bomb, trap door, or other code designed to disrupt, disable, harm or otherwise impede, or to allow unauthorized access to, the operation of any software, firmware, hardware or computer system; (c) to the extent not prohibited by Applicable Laws, it has performed, at its sole cost and expense, a background check on anyone who is or will in the future be performing Services on its behalf and, as a result of such check, has confirmed that none of these individuals, using all names provided/developed and all residential and employment addresses provided/developed for the seven (7)-year period prior to the time such personnel commence any work under the Agreement has been convicted of a felony within the seven (7) years immediately preceding the date on which such individuals shall begin performing Services; (d) it has not provided any commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of CNA, CNA Financial Corporation, or any affiliates or subsidiaries thereof, in connection with the Agreement; (e) except as expressly provided to CNA in writing, none of the personnel who perform or shall in the future perform work under this Agreement is a former employee of CNA or any CNA affiliate; and (f) except as expressly set forth in this Agreement, all Services performed hereunder shall be performed within the United States.

5. *Works for Hire.* Except for pre-existing software, documentation or other materials which Vendor has expressly identified in writing to CNA as proprietary to Vendor or a third party, all materials or products designed or developed by Vendor under the Agreement shall be deemed works made for hire belonging exclusively to CNA such that Vendor shall be deemed to have forever transferred and assigned to CNA any and all right, title and interest it may have therein. As to such identified proprietary or third party material, Vendor grants CNA a non-exclusive, royalty free, fully paid, perpetual, irrevocable license of such material, without right to sublicense, to make, use, sell, copy and display the same.

6. *Vendor Employees; Independent Contractors; Non-Solicitation.* Vendor acknowledges and agrees that all matters relating to the employment of its personnel performing Services shall be the exclusive responsibility of Vendor since Vendor shall be, in all respects, their sole employer with the sole right, obligation and discretion to hire, fire, discipline, evaluate, supervise, manage, train, assign work or define their jobs. In addition, CNA shall not be liable for compensation paid by Vendor to its personnel for time off or overtime. Vendor and CNA acknowledge and agree: (a) they are independent contractors; (b) neither has the authority to bind or make any commitment on behalf of the other; and (c) none of their employees are entitled to any employment rights or benefits of the other party. Further, Vendor shall not, without the prior written consent of CNA, hire any person employed by CNA with whom the party works in

connection with this Agreement, unless when the offer of employment is made such person (i) has not acted on behalf of CNA under this Agreement for at least six (6) months, (ii) has not been employed by CNA for at least six (6) months prior to the offer of employment, or (iii) has been involuntarily terminated by CNA. The foregoing restrictions also shall not apply in the event such person independently responded to an indirect solicitation (including but not limited to available positions listed in newspapers or posted on the internet) not targeting such person.

7. Compliance with Laws. Vendor represents and warrants that it will comply with all applicable laws, ordinances, codes, orders, rules and regulations relating to the Services, each as amended from time to time, including, without limitation, the Foreign Corrupt Practices Act of 1977 and the Patriot Act, as well as regulations and restrictions imposed by the U.S. Treasury's Office of Foreign Assets Control (collectively, the "Applicable Laws"). Without limiting the foregoing, Vendor warrants that: (i) any funds paid to CNA pursuant to this Agreement are not proceeds of any illegal activity; (ii) except as disclosed to CNA in writing, neither it nor any of its owners, directors, employees, agents, or consultants is a Government or Public Official, as defined below, or political party official or candidate for public or political office; and (iii) except as disclosed to CNA in writing, it has not been and is not currently subject to any governmental or regulatory review, audit or inspection related to the FCPA or any anti-bribery law. In the event that during the term of this Agreement there is a change in any of the foregoing, Vendor agrees to promptly notify CNA. For purposes of this section, "Government or Public Official" is any officer or employee or anyone acting in an official capacity on behalf of: a government or any department or agency thereof; a public international organization (such as the United Nations, the International Monetary Fund, the International Committee of the Red Cross, and the World Health Organization), or any department, agency or institution thereof; or a government-owned or controlled company, institution, or other entity, including a government-owned hospital or university

8. Indemnification. Vendor shall indemnify, save and hold harmless CNA, along with all subsidiaries and affiliates of CNA Financial Corporation, and the officers, directors, agents, shareholders, representatives and employees of all the foregoing entities, from any and all liabilities, claims, demands, damages, penalties, settlements and costs of every kind and nature (including, without limitation, attorneys' fees and court costs) for: (i) any negligence, willful misconduct, or violation of Applicable Laws; (ii) any breach of the Agreement; or (iii) any infringement upon or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right committed by Vendor, its agents, representatives or employees, all except to the extent arising from the negligence or willful misconduct of CNA. Should a Service or product furnished by Vendor hereunder become, or in Vendor's opinion be likely to become, the subject of such a claim of infringement or misappropriation, Vendor shall either: (a) procure for CNA the right to continue using the Service or product or (b) replace such Service or product with a functionally-equivalent service or product, or modify such Service or product to make it non-infringing, in either case, as acceptable to CNA in its sole discretion.

9. Insurance. Vendor agrees to keep in full force and effect, at its sole cost and expense, the following policies of insurance: (a) statutory workers' compensation, including occupational disease, in accordance with Applicable Laws; (b) employers' liability insurance with minimum limits of \$500,000 per employee by accident/\$500,000 per employee by disease/\$500,000 policy limit by disease; (c) commercial general liability and/or umbrella/excess liability insurance providing coverage for bodily injury and property damage arising out of the Services and including coverage for contractual liability providing limits of not less than \$2,000,000 per occurrence for bodily injury and property damage/\$2,000,000 per organization or per person for personal injury and advertising liability/\$2,000,000 general policy aggregate/\$2,000,000 product liability/completed operations aggregate (which policy shall be endorsed to name the following as additional insureds for any and all liability relating to the Services or the Agreement: Continental Casualty Company, CNA Financial Corporation, and all other subsidiaries and affiliates of CNA Financial Corporation, along with the respective officers, directors, agents, servants, and

employees of all the foregoing entities); (d) commercial business automobile liability insurance (including coverage for all owned, non-owned, and hired vehicles) providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000; and (e) professional liability insurance including coverage for wrongful acts, errors and omissions, with an occurrence or per claim limit and annual aggregate limit of not less than \$1,000,000. All insurance shall be with insurance companies that maintain a rating greater than A- and are at least a financial size category of VII in the most current publication of A.M. Best's Insurance Reports. In addition, all insurance provided to CNA shall be primary insurance and any other valid insurance for the benefit of CNA shall be excess of such primary insurance. Vendor shall provide CNA with duly executed certificates of insurance prior to commencement of the Services, which certificates shall require not less than thirty (30) days' prior written notice of cancellation, non-renewal, or material change in coverage.

10. Confidentiality. Vendor shall keep confidential, and not use to its own advantage, or sell, transfer, publish, disclose, display or otherwise make available to any person other than Vendor personnel with a need to know such information in order to provide Services to CNA under this Agreement, any confidential, non-public or proprietary information relating to the operation, management and business of CNA, CNA Financial Corporation, Loews Corporation, and all affiliates and subsidiaries thereof including, but not limited to, plans, strategies, internal organization, customer lists and data, "nonpublic personal information" (as defined in Title V of the Financial Modernization Act (the Gramm-Leach-Bliley Act) (15 U.S.C.6801 *et seq.*) and related federal and state laws and regulations), that Vendor learned in connection with its performance under the Agreement unless (a) Vendor obtains CNA's prior written consent, or (b) such disclosure is required by applicable law or by legal, judicial, administrative, or regulatory process, provided that Vendor, to the extent not prohibited by applicable law or the authority with jurisdiction over such process, promptly notifies CNA so that CNA may, if it so elects, seek a protective order or other appropriate relief. Under the circumstances described in clause (b) of the preceding sentence, Vendor shall reasonably cooperate with and assist CNA in the event it seeks a protective order or other appropriate relief. Further, in the event that Vendor is required to disclose such confidential information or chooses to enter into an agreement to govern the scope of its production, Vendor shall first discuss such disclosures or proposed agreement with CNA and provide CNA with an opportunity to review any such disclosures.

12. No Use of CNA Name. Vendor shall not use the name, logo, service marks, trademarks or other protected property of CNA or any subsidiaries or affiliates of CNA, or describe or identify the Services in any publicity releases, marketing materials, advertising or as any reference.

14. CNA Signatories. CNA policy requires signatures to be provided by a Senior Vice President (with attestation), provided by the CNA procurement officer, or provided by a delegated CNA officer ratified by the Corporate Secretary.

15. Notices. All notices under the Agreement shall be in writing and will be effective upon receipt when sent by certified mail, return receipt requested, by nationally recognized commercial overnight courier, by hand delivery, or by facsimile (so long as a copy is contemporaneously sent by first-class mail) addressed to the parties as provided below. Each party may, from time to time, change its address for purposes of providing notice hereunder by delivering written notice thereof in accordance with the foregoing provisions.

To CNA: Continental Casualty Company
333 S. Wabash Avenue
Chicago, Illinois 60604
Attn.: Procurement Officer (EPG)
Fax: (312) 817-3322

16. Choice of Law; Severability; Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflict or choice

of law principles. If anything in the Agreement is held to be invalid, the invalidity thereof shall be severable from the remainder of this Agreement and shall not in any way affect any other covenant, condition or provision herein. The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Illinois, First Judicial District, Cook County, Illinois.

17. Entire Agreement; Modifications; Non-Waiver. This Agreement constitutes the entire agreement between CNA and Vendor relating to the subject matter hereof, and any prior agreements whether verbal or written, have been superseded, merged and integrated into this Agreement. Without limiting the foregoing, the parties agree that: (i) any conflicting or additional terms on any purchase order, invoice, or similar document shall be of no effect; and (ii) any conflicting or additional terms in any online policies or terms of service/use, or in any click-wrap, shrink-wrap, or similar agreement shall be of no effect. Any modifications or amendments to this Agreement may only be made by a mutually executed written amendment. No failure or delay by CNA in exercising any right with respect to this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.

18. Successors & Assigns; No Subcontracting or Assignment. This Agreement shall be binding on and inure to the benefit of both parties and their respective successors and permitted assigns. Vendor may not subcontract, assign or otherwise delegate any duties to be performed under this Agreement without the prior written consent of CNA, which consent may be withheld in CNA's sole discretion. CNA may assign this Agreement to any CNA subsidiary or affiliate upon written notice to Vendor.