

CONTRACT OF INSURANCE - PROFESSIONAL INDEMNITY - REALTY

The person or persons (referred to as "the Insured") named in the Schedule on the Certificate of Insurance attached to this Contract of Insurance have made to Underwriters at Lloyd's, who have subscribed our name(s) to this Contract, a written proposal and declaration, bearing the date stated in the Schedule and containing particulars, representations and statements in reliance on which it is hereby agreed are the basis of this Contract and are to be considered as incorporated in it.

This Contract is evidence that in consideration of the payment of the Premium stated in the Schedule, Underwriters will, to the extent and in the manner set out herein:

A. INSURING CLAUSES

1. Indemnify the Insured up to, but not exceeding in the aggregate for all Claims under this Contract, the Limit of Liability stated in the Schedule against any Claim or **Claims** first made against them, or any of them during the Period of Insurance and which has been notified by the Insureds to Underwriters in writing during the Period of Insurance for breach of professional duty in their conduct of the Professional Business by reason of any act, error or omission, whenever committed or alleged to have been committed by the Insured.
2. In addition, pay **Defence Costs** incurred with the prior written consent of Underwriters in the defence or settlement of any such Claim, provided that, if a payment in excess of the amount of indemnity available under this Contract is to be made to dispose of a Claim, Underwriters' liability for such Defence Costs shall be such proportion thereof as the amount of indemnity available under this Contract in respect of that Claim bears to the amount paid or payable to dispose of that Claim.

B. DEFINITIONS

Where used in this Contract:

Bodily Injury means bodily injury, sickness, disease, emotional distress, or any other mental, psychiatric, emotional or physical injury, or death of any person.

Claim(s) means:

- (a) any Writ, Summons, Application or other originating legal or arbitral process cross-claim, or counter-claim served upon any Insured alleging a breach of professional duty in the conduct of the Insured's Professional Business;
- (b) any written demand alleging any breach of professional duty by the Insured in their conduct of the Professional Business against an Insured communicated to an Insured by whatever means.

All claims arising from the same act error or omission shall be deemed a single Claim.

Computer System means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol, or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, run-time environments or compilers), firmware or software.

Contract or Contract of Insurance means:

- (a) the Contract of Insurance, the Certificate of Insurance and Schedule, insuring clauses, extensions, conditions, definitions, exclusions and other terms contained herein; and
- (b) any endorsement attaching to and forming part of this Contract of Insurance either at inception or during the Period of Insurance; and
- (c) the information contained in or associated with the proposal.

Defence Costs means all reasonable costs, charges, fees (including but not limited to legal counsel's fees and expert's fees) incurred in defending any Claim in respect of any alleged breach of duty by the Insured in the conduct of their Professional Business. Defence Costs do not include any wages, salaries or fees of the Insured.

Documents means deeds, wills, agreements, magazines, maps, plans, records, books, letters, contracts of insurance, computer tapes, computer discs, forms and documents of any nature whatsoever (other than bearer bonds, coupons, stamps, banknotes, currency notes, cheques and negotiable instruments) whether written, printed or capable of being reproduced by any other method, (but excluding any computer or electronic data which is destroyed or damaged, lost or mislaid by manual, electronic or mechanical act, error or omission) PROVIDED THAT such items are:

- (a) the property of (or entrusted to) the Insured or the Insured's predecessor in the Professional Business; and
- (b) now or hereafter (or are believed by the Insured to be) in the Insured's hands or in the hands of any other party or parties to or with whom such items have been entrusted, lodged or deposited by the Insured in the ordinary course of the Professional business.

Employee means any person who was, is, or shall be under a contract of service with the Insured provided always that such definition shall include a person whose position is terminated during the Period of Insurance.

Excess means the amount specified in the Schedule.

Family Member means:

- (a) the Insured's spouse or domestic partner;
- (b) the parent, sibling, or child of the insured or of the Insured's spouse or domestic partner

Financial Interest means a financial interest of greater than 10% of the issued capital in a company or more than 10% of the value of any other business.

Financial Service

'provision of a Financial Service' has the same meaning as that expression is given by Chapter 7 of the Corporations Act 2001 (Cth) but includes the referring to and introduction of any person to another offering to provide a Financial Service.

Insured means:

- (a) the person(s), principal(s), members of the partnership, directors, company or corporations, statutory authority, association or the legal entity specified in the Schedule and Employees thereof being the basis of this Contract, and their predecessors in the Professional Business; and
- (b) any person who becomes, during the Period of Insurance, a partner, director, or Employee of the Insured, but in each case solely in respect of work carried out for or on behalf of the Insured and in the conduct of the Professional Business.

Limit of Liability means the amount(s) specified in the Schedule.

Loss means the total amount which any Insured become legally obliged to pay on account of a Claim including, but not limited to, damages, judgements, settlements, costs and Defence Costs.

Period of Insurance means the period specified in the Schedule.

Premium means the amount specified in the Schedule.

Professional Business means the business of the Insured specified in the Schedule.

Property Damage means:

- (a) physical injury or damage to or defect impairment or destruction or loss of tangible property including consequential loss or the loss of use of that property; or
- (b) consequential loss relating to, or loss of use of, tangible property which has not been damaged as defined in paragraph (a) of this definition.

Retroactive Date means the date specified in the Schedule.

Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an Insured person individually or otherwise.

Wrongful Employment Act means any Wrongful Act committed by the Insured in connection with the employment by the Insured of a person including but not limited to: wrongful dismissal; denial of natural justice relating to wrongful termination, discharge or termination of employment; breach of any oral or written employment contract or quasi-employment contract; employment discrimination laws (including workplace and sexual harassment); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; negligent evaluation of that person's performance; invasion of that person's privacy, and employment-related defamation of that person (including by way of an advertisement).

Year 2000 Compliant means that neither performance nor functionality of the Computer System is affected by any changes, prior to, during and/or after, the Year 2000. In particular:

- (a) no value for current date will cause or give rise to any interruption in the operation of the Computer System;
- (b) date based functionality and performance must behave consistently for dates, prior to, during and/or after, the Year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
- (d) the Year 2000 must be recognised as a leap year.

C. AUTOMATIC EXTENSIONS

This Contract of Insurance is, subject otherwise to its terms, conditions, limitations and exclusions, extended to:

1. Libel and Slander

Indemnify the Insured against any Claim or Claims first made against them, or any of them during the Period of Insurance and which has been notified by the Insured to Underwriters in writing, during the Period of Insurance, for unintentional libel or slander by the Insured by reason of words written or spoken in connection with the conduct of the Professional Business.

2. Dishonesty of Employees

Notwithstanding the provisions of exclusion 2. of this Contract, indemnify the Insured against any Claim or Claims first made against them, or any of them, during the Period of Insurance and which has been notified by the Insured to Underwriters in writing during the Period of Insurance which were brought about or contributed to by the dishonest, fraudulent, criminal, reckless or malicious act or omission of any Employee.

This Contract shall not provide indemnity to any person committing or condoning such dishonest, fraudulent, criminal, reckless or malicious act.

This extension excludes any Claim for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

3. Trade Practices & Related Legislation

Indemnify the Insured against any Claim or Claims first made against them, or any of them, during the Period of Insurance and which has been notified by the Insured to Underwriters in writing during the Period of Insurance for misleading or deceptive conduct in breach of Division 1 of part V of the Trade Practices Act 1974 (Cth), or any of the Fair Trading Acts enacted by the States or Territories of the Commonwealth of Australia or any of them.

However, this extension does not cover any Claim or Defence Costs:

- (a) arising out of, or in connection with, deliberate or fraudulent conduct; or
- (b) made pursuant to the penal or criminal provisions of the said legislation.

4. Loss of Documents

Indemnify the Insured against any Claim up to but not exceeding in the aggregate for all Claims under this extension, the Limit of Liability for loss of, damage to, or destruction of any Documents within the territorial limits of the Commonwealth of Australia, New Zealand and Papua New Guinea, during the Period of Insurance.

Provided always that:

- (a) the Insured shall as soon as reasonably practicable after discovery thereof give written notice to Underwriters that any documents have been destroyed, or damaged, or lost, or mislaid, and after diligent search cannot be found;
- (b) The amount of any Claim shall be supported by invoices and/or accounts which shall be subject to approval by a competent person to be nominated by Underwriters with the approval of the Insured, but failing approval, a competent person will be appointed by the current President of The Institute of Arbitrators & Mediators of Australia;
- (c) No liability shall attach for any Claim in connection with wear, tear, vermin, mould or mildew or any other gradual operating cause;
- (d) The Insured shall subrogate to Underwriters its right of prosecution against any other person(s) for the recovery thereof;
- (e) This extension does not indemnify the Insured against any liability, costs or expenses for which the Insured are entitled to an indemnify under this Contract of Insurance apart from this extension.

5. Fidelity

Definitions applicable to this benefit – “employee(s)” means any person employed by you under a contract of service or apprenticeship but does not include:

Any Director, Partner, Trustee or Principle except when performing acts within the scope of the usual of an employee. Any broker, factor, commission agent, cosignee, contractor or other agent of the same general character.

“Money” means cash, notes, negotiable instruments, cheques, postal orders, money orders, negotiable securities, postage stamps, credit card sale vouchers, franking machine credits, and duty & stamp stamps”

The Indemnity

We will pay for the loss of money caused by theft, fraud or dishonesty by any of your employees provided that the loss:

(a) Occurs during the period of insurance

(b) Is discovered no later than 12 months after the expiry of the period of insurance or termination of employment, whichever occurs first.

The maximum amount we will pay for all claims during the period of insurance is \$50,000.

Automatic Extensions applicable to Fidelity

Unidentified Employees – If a loss is alleged to have occurred as a result of the fraud or dishonesty of any one or more of your employees and you are unable to positively identify them we will pay for the loss provided that you are able to provide evidence at your expense that the loss was due to the fraud or dishonesty of one or more employees.

Retroactive Cover – The insurance provided under this additional benefit also applies to the loss by fraud or dishonesty during the currency of any previous policy provided that:

(a) The discovery period in such previous policy has expired

(b) The fraud or dishonesty is discovered within:

(i) The period of this policy, or

(ii) 12 months of the termination of this policy or 12 months after the termination of the employment of the employee concerned, whichever shall first occur

(c) The cover we provide will fall within and not be in addition to the sum insured shown in the current schedule

(d) We shall not be liable for any loss arising from an act of fraud or dishonesty committed more than 12 months before the inception of this section of the policy.

Exclusions applicable to Fidelity – Employee Dishonesty cover section

We will not pay for any loss of money or property:

1. Resulting from any further act of fraud or dishonesty after you first discover that the employee has previously engaged in provable dishonest conduct or has previous convictions for dishonest acts.

2. if the only proof of loss is shortage revealed by accounting records or inventory stock-take.

3. Discovered more than 12 months after the period of insurance has expired or more than 12 months after the termination of employment of the employee concerned.

4. That is not reported to us within 14 days of the discovery of any act of fraud or dishonesty on the part of any employee or any other matter in respect of which a claim may arise.

5. Beyond the limit of cover stated in this additional benefit in respect of any one employee and all employees, even if the dishonest conduct continued during more than one period of insurance.

Special Conditions applicable to Fidelity

To the extent permitted by law you must agree to withhold any salary, commission, moneys or assets that are the property of any employee whose dishonesty has caused a claim under this cover section. Any such sum shall be deducted from the amount of the loss before any claim is made under this policy.

In the event of the sum insured being reduced by the amount of any claim payable under this additional benefit, the sum insured may be reinstated by payment of appropriate additional premium, provided that the amount by which the sum insured is reinstated shall be available only in respect of acts of fraud or dishonesty committed after such reinstatement.

6. Reinstatement

When shown in the Schedule Underwriters will increase the Limit of Liability by an amount equal to that Limit of Liability provided always that Underwriters' total liability under this Contract shall not exceed:

- (a) in respect of any one Claim, the Limit of Liability; and
- (b) in respect of all Claims, an amount equal to twice such Limit of Liability.

It is the intention of this extension that the sums thus reinstated will provide cover in respect of subsequent Claims under this Contract which are totally unrelated to the Claim(s), error(s), act(s) or omission(s) which gave rise to the Claim(s) already notified under this Contract.

D. OPTIONAL EXTENSION

1. Previous Business

Notwithstanding exclusion 8, this Contract shall, subject otherwise to its terms, conditions, limitations and exclusions have effect as if:-

- (a) *(Incoming Partners)*

after the words "in their conduct of the Professional Business" in insuring clause 1. there were inserted the words "or in the conduct of any business which was substantially the same kind of business as the Professional Business, and which was conducted by any Insured named in the Schedule in a professional capacity before joining the Insured named in the Schedule, provided that such acts, errors or omissions occurred after the Retroactive Date"; and

- (b) *(Outgoing Partners)*

the definitions of "Insured" includes any former partners **of the Insured** named in the Schedule.

E. EXCLUSIONS

Underwriters shall not be liable for any Claim(s) made against the Insured, or Defence Costs, arising directly or indirectly from, or in connection with:

1. any act or omission committed or alleged to have been committed prior to the **Retroactive Date**.

This exclusion extends to and includes any Claim or Loss relating to or in any way connected with the original subject matter or conduct giving rise to such Claim or Loss including any repetition or continuation of any such act, error or omission occurring after the Retroactive Date.

2. (a) any **dishonest, fraudulent, criminal, reckless or malicious act or omission** of any Insured or of:

- (i) any company, person or entity which has a beneficial interest in such Insured; or
- (ii) any of their consultants, contractors, sub-contractors, or agents; or

- (b) any wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by any Insured or their consultants, contractors, sub-contractors, or agents.

Except to the extent covered under automatic extension 2.

3. any **contractual liability, warranty or guarantee** assumed or provided by the Insured, except if the Insured would have been liable in the absence of the contractual liability, warranty or guarantee. (For the avoidance of doubt, it is not intended that this exclusion apply where the Insured's liability for breach of contract exceeds their liability in tort solely because, as a matter of law, contributory negligence is not available as a defence).

4. any act, error or omission committed within the **territorial limits** of the United States of America and/or Dominion of Canada and their Territories, Dependencies or Protectorates, or in accordance with or pursuant to the laws of the United States of America and/or Dominion of Canada.
5. any liability for which the Insured is or would be entitled to any indemnity under any **other insurance required by law** to be in effect or to any contribution or protection from any statutory, mutual, fidelity or contribution fund or arrangement of any description.
6. any **act, error or omission** of any Insured **prior to becoming an Employee, proprietor**, director, or partner of the Insured named in the Schedule.

If cover for any Incoming Partners' Previous Business is specified as an extension in the Schedule, this exclusion does not apply to the person(s) covered by that extension in respect of Claim(s) made against them and Defence Costs, arising out of acts, errors or omissions, committed or alleged to have been committed prior to their joining the Insured and in the conduct of substantially the same kind of business as the Professional Business provided that such acts, errors or omissions occurred after the Retroactive Date.

7. any Claim made **prior** to the commencement of the Period of Insurance, or in respect of any **Claim or circumstances**:
 - (a) notified under any previous Contract or policy; or
 - (b) which was known to the Insured at the commencement of the Period of Insurance and which the Insured considered or which a reasonable person in the position of Insured would or might have considered may give rise to Claim; or
 - (c) which is stated in any proposal or declaration in relation to this or any earlier Contract or policy.
8. any **trading debt** incurred by the Insured.
9. any **punitive**, aggravated, multiple or exemplary **damages**, or **fines** or **penalties** imposed by law or any investigation or Defence Costs arising as a consequence thereof.
10. any **bankruptcy**, insolvency or liquidation of the Insured.
11. any Claim(s):
 - (a) by any **other Insured**, or any **Family Member**; or
 - (b) involving any **entity**, facility or arrangement of any description which at the date the Claim is made against the Insured, or at the time the events giving rise to the Claim occurred:
 - (i) was **managed** or controlled wholly or in part by the Insured, or any nominee(s) of the Insured, or any Family Member; or
 - (ii) in which the Insured or any Family Member had a direct or indirect **Financial Interest**.
12. any **fees** claimed back by a client of the Insured or which have had to be refunded to a client of the Insured due, or allegedly due to non-performance of the Insured's contractual obligations to that client.
13. **goods, products or merchandise** (including containers thereof), manufactured, produced, processed, treated, sold, supplied, distributed, assembled, installed, services, handled or dealt with in any way, by or on behalf of the Insured.
14. (a) **nuclear weapons materials**; or
(b) ionising radiations or contamination by radioactivity from any **nuclear** fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission.
15. any of the following regardless of any other cause or event contribution concurrently or in any other sequence to the loss:
 - (a) **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
 - (b) 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.

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 (a) and/or (b) above is also excluded.

16. any actual, alleged or threatened discharge, release, escape or disposal of **pollutants** into or on real or personal property, water or the atmosphere; or
17. any duty or obligation assumed by the Insured which is **not** assumed in the **normal conduct** of the Professional Business.
18. **Bodily Injury**, (this includes any consequential claim for contribution or indemnity, howsoever formulated, in connection with any **Bodily Injury**), or **Property Damage**, unless such Claim or loss arises out of a breach of a professional duty in the conduct of the Professional Business, except to the extent covered under automatic extension 4.
19. Bodily Injury of any person occurring in the course of their employment either as an Employee of the Insured or as contractor or sub-contractor, or Property Damage to any property of any such Employee or contractor or sub-contractor, arising out of and/or in the course of their **employment** and including any statutory recovery or subrogation action by the Victorian WorkCover Authority pursuant to Section 138 of the Accident Compensation Act 1985, or by any like Authority under any similar legislation in Victoria or any other Australian State or Territory, in respect to any payments of whatsoever nature made by any such Authority.
20. Bodily Injury, or Property Damage in any way relating to:
 - (a) mining, processing, transport, distribution and/or storage of **asbestos**;
 - (b) manufacture of asbestos products or processing materials containing asbestos;
 - (c) any process of decontamination, treatment or control of asbestos.

Sub-paragraph (c) shall apply to those claims arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos.
21. any **Computer System** whether or not the property of the Insured, not being Year 2000 Compliant and any attempted correction, conversion, renovation, rewriting or replacement of any Computer System, related to Year 2000 Compliance.
22. any act, error or omission on the part of the Insured in connection with the **effecting** or maintenance of any, or any adequate **insurance**.
23. any actual or alleged **Wrongful Employment Act**.
24. the provision of any **Financial Service** no matter when provided and even if by virtue only of the Corporations Regulations the conduct of the Insured was taken not to be the provision of a Financial Service.
25. work performed by **contractors** and/or sub-contractors for or on behalf of the Insured.
26. (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any **fungi, moulds, spores or mycotoxins** of any kind; or
 - (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
 - (c) any government or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing, for detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.
27. any **infringement of copyright**, trademark, trade secrets, registered design or patent, or any plagiarism, or breach of confidentiality, or breach of or infringement of privacy.
28. any valuations carried out by the **Insured** which involve solicitor-introduced mortgages, including but not limited to any loans emanating from any solicitor-controlled or managed mortgage fund or solicitor private lending fund and/or scheme and/or arrangement where the Loan to Valuation Ratio (LVR) as at the valuation, exceeds 70%.
29. any valuations carried out by the **Insured** for a Managed Investment Act Lender where the principal/primary purpose of the property acquisition is for tax-minimisation and /or the principal use of the property is for primary production.
30. any kerbside valuations / restricted valuations / restricted assessments unless conducted in strict accordance with guidelines established / amended from time to time by the Australian Property Institute (API).
31. any valuation carried out by the **Insured** where the valuation is assigned to a third party without the specific written consent of the valuer and in accordance with the other conditions of this Endorsement. No indemnity will be granted *under any circumstances* for any assigned valuation older than 90 days.

32. any property valuation undertaken without being able to provide evidence of having followed the API Practice Notes and Guidelines and without using 3 comparable valuations and / or sales, or as many as are reasonably available (evidence to be maintained on file).
33. any **Claim** or **Claims** arising out of, based upon, directly or indirectly resulting from or in consequence of, or in any way involving the depreciation, failure to appreciate or loss of any investments and/or property for investment purposes when such depreciation, failure to appreciate or loss is a result of normal or abnormal fluctuations in any financial, stock or commodity or other markets which are outside the influence or control of the **Insured**.
34. any amount payable under any fund established by any statutory or professional body.
35. any valuations prepared by an unlicensed or unregistered or unaccredited valuer.
36. any valuations which do not contain a statement to the following effect:

“We have carried out an inspection of exposed and readily accessible areas of the improvements. However, the valuer is not a building construction or structural expert and is therefore unable to certify the structural soundness of the improvements. Readers of this report should make their own enquiries”.

37. any valuations which do not contain a third party disclaimer to the following effect:

“This valuation has been prepared on specific instructions from (name of client(s)) for the purposes of (purpose). The report is not to be relied upon by any other person or for any other purpose. We accept no liability to third parties nor do we contemplate that this report will be relied upon by third parties. We invite other parties who may come into possession of this report to seek our written consent to them relying on this report. We reserve the right to withhold our consent or to review the contents of this report in the event that our consent is sought”.

38. Claims arising out of solvency of contractors and builders

F. CONDITIONS

1. Each subscribing **Underwriters’ obligations** under this Contract to which he or she subscribes is **several** and not joint and is limited solely to the extent of his or her individual subscription. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of his or her obligations.
2. That any realtor who undertakes valuations must be a member of the API and regularly attend the API Risk Management courses.
3. The **limit of Underwriters’ liability** for each Claim, whether covered by one or more insuring clauses, shall be the Limit of Liability minus the Excess (if applicable). The total aggregate liability of Underwriters for all Claim(s) first made during the Period of Insurance, whether covered by one or more insuring clauses, shall be the Limit of Liability in accordance with optional extension 1, for each Period of Insurance minus the Excess (if applicable). Where Claim(s) arise from the same act, error or omission, the same spoken or written words, or destruction, damage, loss or mislaying of the documents as a result of a number of occurrences consequent upon or attributable to one source or original cause, Underwriters’ liability will, in respect of such Claim(s), be limited in the aggregate during the Period of Insurance to the Limit of Liability stated in the Schedule in respect of any one Claim.
4. In respect of each Claim made against the Insured the amount of the **Excess** shall be **borne by the Insured** at their own risk and Underwriters shall only be liable to indemnify the Insured in excess of such amount including defence costs and expenses. Should any Claim made against the Insured involve more than one act, error or omission then the Excess shall apply to each such act, error or omission separately.
5. If any Claim under this Contract shall be in any respect **fraudulent** or if any fraudulent means or devices are used by the Insured, or anyone acting on the Insured’s behalf to obtain any benefit under this Contract, Underwriters will have no liability to the Insured.
6. Notwithstanding the provisions of exclusion 2, this Contract will protect the interests of **innocent** members of the **Insured** (other than in the case of sole traders), in that Underwriters will not void the Contract because of the failure of a person guilty of dishonesty of any description to disclose such dishonesty on the proposal form being the basis of this Contract.
7. If any payment is made under this Contract in respect of a Claim, Underwriters are thereupon subrogated to all the Insured’s rights of recovery in relation thereto. Underwriters will not exercise any such rights against any Employee of the Professional Business unless the claim has been brought about or contributed to by any dishonest, fraudulent, criminal, reckless or malicious act or omission of the Employee.
8. (a) (i) The Insured shall not admit liability for, or settle, any claim falling within the insuring clauses or incur any costs or expenses in connection therewith without the written **consent** of Underwriters (such consent not to be unreasonably

withheld), and subject to (iii) below, Underwriters shall be entitled to **take over** the **conduct** in the name of the Insured the defence or settlement of any such Claim.

(ii) Subject to paragraph (iii) hereunder if the Insured shall refuse to consent to or accept any proposed **settlement** or recommendation made by Underwriters, or continues any legal proceedings in connection therewith, then Underwriters' liability to indemnify the Insured shall be limited to the amount for which the Claim could have been so settled plus the costs and expenses incurred up to the date of such refusal minus the Excess.

(iii) The Insured or Underwriters shall not be required to **contest** any legal **proceedings** unless a Senior Counsel (to be mutually agreed by the Insured and Underwriters or failing agreement to be appointed by the current President of The Institute of Arbitrators & Mediators Australia) shall advise that such proceedings should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff (or other litigant), the likely Defence Costs under insuring clause 2, and the prospects of the Insured successfully defending the Claim. The cost of Senior Counsel's opinion shall be regarded as part of Defence Costs under insuring clause 2.

(b) Underwriters may if they believe that the **Claim will not exceed** the **Excess** instruct the Insured to conduct the defence of the Claim.

9. The Insured shall take all reasonable practicable steps and precautions to avoid and **minimise** any liability or **loss** which may be or is the subject of a Claim under this Contract.

10. In the event of any other valid insurance or indemnity available to the Insured, or any self insured amount, subject to the Insurance Contract Act 1984 (Cth), this Contract attaches as excess insurance.

11. The insured must as a condition precedent to their right to be indemnified under this Contract give to Underwriters **as soon as practicable, notice in writing of any Claim** made against the Insured whether such Claim is oral or in writing, and must upon request give to Underwriters such information as Underwriters may reasonably require to investigate the matter so reported, and Underwriters will be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have such rights. The Insured must give all necessary information and assistance to enable Underwriters to pursue and enforce such rights.

12. Irrespective of Condition 10., the Insured must as a **condition precedent** to their right to be indemnified under the Dishonesty of Employees and Fidelity extensions give to Underwriters **notice in writing within 28 days**.

(a) of the discovery of any loss or liability which gives rise, or may give rise, to a Claim;

(b) of the discovery of reasonable cause for suspicion of fraud or dishonesty on the part of any of their Employees, whether giving rise to a Claim or not;

and Underwriters will not be liable for any loss sustained in consequence of any act or omission on the part of the Employee concerned after the date of such discovery.

13. In the event of a Claim under the Dishonesty of Employees and Fidelity extensions, the Insured must give **all necessary information and assistance** to enable Underwriters to sue for and obtain indemnity, contribution or reimbursement from the Employee concerned or from his estate of any moneys paid or payable by Underwriters.

Any moneys which but for an Employee's fraud or dishonesty would have been payable to him by the Insured, and any moneys of the Employee in the hands of the Insured, will be deducted from the amount otherwise payable by Underwriters in respect of a Claim arising from the fraud or dishonesty of the Employee.

14. All **notifications** to the Underwriters will be deemed given if notified in writing to:-

JUA Underwriting Agency Pty Ltd
Level 1
210 George Street
Sydney 2000

15. **Jurisdiction and Service of Suit**

The Underwriters herein agree that:

(a) In the event of a dispute arising under this Contract, Underwriters at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

(b) Any summons notice or process to be served upon the Underwriters may be served upon (TBA) who has authority to accept, service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on Underwriters' behalf.

- (c) If a suit is instituted against any one of the Underwriters all Underwriters hereon will be abide by the final decision of such Court or any competent Appellate Court.

16. Construction / Interpretation

- (a) Clause headings and the use of bold print are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) Unless the contrary intention appears in this Contract:
- (i) words importing a gender include any other gender, and
 - (ii) words in the singular include the plural and words in the plural include the singular;
- (c) References to statutes include amendments thereof, regulations thereunder, and re-enactments or consolidations thereof.

In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia, and strives to comply with the agreement we have made under the General Insurance Code of Conduct. Our aim is to provide the highest service to our Australian Policyholders and, to this end, we have developed the following procedures for the fair handling of complaints from Lloyd's policyholders. Any enquiry or complaint relating to this insurance should be referred to the Coverholder shown above in the first instance. In the unlikely event that this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact:

Lloyd's Australia Limited

Suite 2, Level 21

Angel Place

123 Pitt Street

Sydney NSW 2000

Telephone Number: (02) 9223 1433

Fax No: (02) 9223 1466

If your dispute is not resolved in a manner satisfactory to you, you will then be provided with details about the **Insurance Ombudsman Service Limited**, which is an independent body that operates nationally in Australia and aims to resolve disputes between policyholders and their insurers. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

The Underwriters accepting this insurance agree that:

- a) if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 2, Level 21

Angel Place

123 Pitt Street

Sydney NSW 2000

who has authority to accept service and to appear on the Underwriters' behalf;

- c) if a suit is instituted against any of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

To be valid, this Contract must have attached to it the Certificate of Insurance signed by an authorised officer of JUA Underwriting Agency Pty Limited.

THIS IS TO CERTIFY that in accordance with the authorisation granted to JUA Underwriting Agency Pty Limited under the Contract No. stated in the Schedule by certain Underwriters at Lloyd's whose names and the proportions underwritten by them which will be supplied on application, can be ascertained by reference to the said Contract which bears the Seal of Lloyd's Policy Signing Office, and in consideration of the premium specified herein, the said Underwriters are hereby bound, each for his own part and not for another,

their Heirs, Executors and Administrators, to indemnify in accordance with the terms and conditions contained herein or endorsed hereon.

SIGNED ON BEHALF OF:-

JUA Underwriting Agency Pty Limited

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JUA Underwriting Agency Pty Limited is conscious of its obligations under the privacy legislation and regulations relating to the way we can collect, use, keep secure and disclose personal information.

JUA Underwriting Agency Pty Limited has developed a privacy policy which explains what sort of personal information we hold about you and what we do with that information. Please contact your Insurance Broker to obtain a copy of JUA Underwriting Agency Pty Ltd's privacy policy.