

COMBINED PROFESSIONAL INDEMNITY & GENERAL LIABILITY CONTRACT OF INSURANCE FOR MEMBERS OF AUSTRALIAN BOOKKEEPERS NETWORK

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

SECTION 1. INSURING CLAUSE

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 in this Contract, indemnify the Insured, on the terms and conditions contained in the Contract, up to an amount not exceeding the Sum Insured inclusive of Defence Costs against any Claim or Claims first made against the Insured and reported to Underwriters during the Period of Insurance in respect of any civil liability incurred in connection with Professional Services rendered by the Insured in the conduct of its Professional Business, other than any Claim or circumstance which may give rise to a Claim stated on the proposal form or declaration referred to in the Schedule, or any matter previously notified to any Insurer in respect of, or arising out of, any Claim, or circumstance which may be reasonably expected to give rise to a Claim, known to the Insured (as defined in definition 6.8) at the commencement of the Period of Insurance;

Provided that:

All Claims made against one or more Insured, including Claims under Extension 3.1, shall, unless they arise from acts or omissions or occurrences that are different and totally unrelated, be regarded as one aggregated Claim and Underwriters' total liability inclusive of Defence Costs under this Contract of Insurance for the aggregated Claim shall not exceed the Sum Insured.

SECTION 2. AUTOMATIC COVERAGE

This Contract of Insurance subject otherwise to its terms, conditions, limitations and exclusions includes cover for any Claim or Claims first made against the Insured during the Period of Insurance and which has been notified by the Insured to Underwriters in writing during the period of Insurance:

2.1 Trade Practices Legislation

for any unintentional breach 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.

However this Contract does not cover Claims:

- (a) arising out of or happening through deliberate or fraudulent conduct; or
- (b) made pursuant to the penal or criminal provisions of the said legislation including costs ordered against an Insured.

2.2 Libel and Slander

for unintentional libel or slander provided that such Claim arises from the conduct of the Professional Business as described in the Schedule and such conduct arises after the inception date stipulated in the Schedule.

2.3 Dishonesty

which notwithstanding the provisions of Exclusion 4.2 of this Contract, was brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of any person employed by the Insured or any company or entity which has a beneficial interest in the Insured.

Indemnity shall not be extended to any person committing or condoning such dishonest, fraudulent, criminal or malicious act.

This cover excludes claims for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

2.4 Loss of Documents

arising directly or indirectly out of the loss of, damage to, or destruction of any Documents which were in the custody of the Insured or any other person to whom the Insured had delegated custody.

2.5 Previous Business

arising from Professional Services in the same Profession which were previously provided by the Insured but not more than twelve (12) months before the inception date stipulated in the Schedule.

2.6 Good Samaritan Acts

arising out of the provision of emergency first aid assistance by an appropriately qualified employee of the Insured to any person other than a member of that employee's family.

Cover under this Contract excludes acts where the employee was acting under a contract of employment with an employer other than the Insured.

2.7 Advancement of Defence Costs

where Underwriters have not confirmed indemnity under this Contract, they may in their absolute discretion pay all reasonable Defence Costs arising from a Claim, provided that the Insured obtains Underwriters' written consent prior to incurring those Defence Costs. Where Underwriters have made a payment under cover provided by this clause. Underwriters retain the right to cease such payments at any time and recover such payments should it be subsequently agreed or established by judgment or final adjudication that the Insured was not entitled to indemnity under this Contract.

Provided that:-

- (a) Underwriters will not pay more than a Sub Limit of Liability equal to \$5,000 in the aggregate; and
- (b) any sums paid by Underwriters are part of, and not in addition to, the Sum Insured.

2.8 New Subsidiary Companies

Subject to the terms of the Insuring Clause and all other terms and conditions of this Contract, Underwriters agree to indemnify any subsidiary company acquired or created during the Period of Insurance for a period of up to thirty days from the date of acquisition or creation but only in respect of the Professional Services stated in the Schedule and carried out after the date of acquisition or creation.

Cover provided by this clause does not alter the Sum Insured and is subject to the Period of Insurance.

2.9 Official Inquiries

Subject to the terms of the Insuring Clause and all other terms and conditions of the Contract, Underwriters agree to indemnify the Insured against any Claim in respect of all costs and expenses reasonably incurred in representation and defence at any official inquiry, disciplinary or criminal legal proceedings instituted in connection with the Professional Services during the Period of Insurance.

However, Underwriters shall not be liable for any costs or expenses incurred in respect of any criminal proceedings where the Insured is found guilty.

Provided that:-

Underwriters will not pay more than a Sub Limit of Liability equal to \$5,000 in the aggregate and any sums paid by Underwriters are part of, and not in addition to, the Sum Insured.

2.10 Intellectual Property Rights

Arising from any unintentional breach, or infringement of privacy, or use of confidential information, trademarks, trade secrets, patents, copyright, registered designs or the system or programs of others committed by the Insured in the conduct of the Professional Business.

Provided always that no indemnity shall be afforded to any Insured intentionally committing, assisting or condoning such conduct.

SECTION 3. OPTIONAL EXTENSIONS

3.1 Fidelity

If cover for Fidelity is specified in the Schedule, notwithstanding the provisions of Exclusion 4.2, this Contract will, subject otherwise to its terms, conditions, limitations and exclusions to the extent and in the manner set out in this extension, indemnify the Insured up to, but not exceeding in the aggregate for all Claims under this extension, the Limit of Liability specified in the Schedule for Fidelity against any loss of money or of any other property whatsoever:

- (a) belonging to the Insured; or
- (b) for which the Insured is legally liable

which the Insured, during the Period of Insurance, discovers and notifies in writing to Underwriters, within 28 days after such discovery, that it has sustained in consequence of any dishonest or fraudulent act or omission of any person while employed under a contract of service or apprenticeship with the Insured.

The Insured must notify the police and a criminal action be concluded successfully by conviction registered against the person or persons responsible for any loss sustained under this extension before Underwriters are called on to indemnify the Insured.

This extension does not indemnify the Insured against any loss:

- (i) for which the Insured is otherwise entitled to an indemnity under this Contract apart from this extension; or
- (ii) brought about or contributed to by any dishonest or fraudulent act or omission of the Insured other than an Employee, or their predecessors in the Professional Business stated in the Schedule; or
- (iii) not discovered and notified to Underwriters within 60 days of the expiry of this Contract.

3.2 PUBLIC LIABILITY EXTENSION

3.2.1 If cover for Public Liability is specified in the Schedule this Contract will subject otherwise to its terms, conditions, limitations and exclusions to the extent and in the manner set out in this extension indemnify the Insured up to but not exceeding in the aggregate for all sums including defence costs the Limit of Liability specified in the schedule for Public Liability which the Insured shall become legally liable to pay for compensation in respect to:

- (a) bodily injury (which expression includes death and illness); and
- (b) damage to property (which expression includes loss of property)

arising out of an Accident happening during the Period of Insurance in connection with the Professional Services notwithstanding the Insuring Clause in Section 1.

3.2.2 Additional Benefits Applying to Extension 3.2 – Public Liability

Cover under Public Liability shall include the following additional benefits:

(a) Tenants Liability

for compensation in respect of the Insured's obligations as a tenant under any lease agreement to a lessor for actions, suits and demands in respect of bodily injury or damage to property, provided that such injury or damage results from an accident arising from the use or occupancy by the Insured, the Insured's invitees or licensees of a building at the Insured's business address or of passenger or goods elevators or escalators installed in that building.

(b) Goods Sold and Supplied

for compensation for any defect or deficiency in goods sold or supplied (which expression includes containers) by the Insured after such goods have passed from the control and actual physical custody of the Insured.

Provided that such goods:

- (i) have been disclosed to Underwriters in the proposal; and
- (ii) have not been manufactured, formulated, designed, produced, processed, treated, assembled, recommended, serviced or dealt with in any way by the Insured other than by sale or supply of another's goods.

SECTION 4. EXCLUSIONS

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

4.1 Known Claim and Circumstance

- (a) made against, or intimated to, the Insured prior to the commencement of the Period of Insurance; or
- (b) notified under any previous insurance or policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) the Insured was aware of prior to commencement of the Period of Insurance; and

- (ii) a reasonable person in the position of the Insured would have considered might give rise to a Claim against the Insured; or
- (d) arising out of, or connected with, the Insured's activities carried out prior to the Retroactive Date, if any, specified in the Schedule. This subparagraph (d) extends to and includes any Claim or Loss relating to or in any way connected with the original subject matter or conduct given rise to such Claim or Loss including any repetition or continuation of such conduct occurring after the Retroactive Date.

4.2 Dishonesty

- (a) arising out of, or connected with, any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any Insured or their consultants, contractors, sub-contractors, or agents; or
- (b) arising out of, or connected with, a 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 the Insured or their consultants, contractors, sub-contractors or agents;

except to the extent to which cover is provided under automatic coverage 2.3 and optional extension 3.1.

4.3 Contractual Liability

any contractual liability, warranty or guarantee assumed or provided by the Insured except if the Insured would have been liable in the absence of that contractual liability, warranty or guarantee.

4.4 Obligations to Employees

the bodily injury, mental injury, sickness, disease or death of any employee of the Insured or damage to or destruction of any property of any employee, including loss of use, arising out of, or in the course of, their employment.

4.5 Fines & Penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law or any investigation or Defence Costs arising as a consequence thereof.

4.6 Nuclear

- (a) arising out of or connected with loss, damage or liability directly or indirectly occasioned by or caused by or arising from or in consequence of or contributed to by nuclear weapons materials; or
- (b) arising out of or connected with loss, damage or liability directly or indirectly occasioned by or caused by or arising from or in consequence of, or contributed to by 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.

4.7 War and Terrorism

for 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:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, 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 exclusion 4.7(a) and/or (b) above is also excluded.

4.8 Territorial Limits

any act, error or omission or Professional Services undertaken by the Insured outside the territorial limits of the Commonwealth of Australia, Papua New Guinea or New Zealand unless otherwise extended by endorsement.

4.9 Admitted Claims

any claim which the Insured has settled, or has agreed to settle, or where the Insured has made an admission, offer, payment, or otherwise assumed any contractual obligation with respect to any Claim. This includes a contractual obligation which excludes or limits the Insured's rights of recovery from a third party.

4.10 Other Insurance

which is covered or should be covered under insurance such as workers compensation or compulsory third party motor, or fidelity insurance required by law or any form of regulation (including industry self regulation) to be in effect, subject always to the provisions of the Insurance Contracts Act 1984 (Cth).

4.11 Date Recognition (Y2K)

loss, liability or costs and expenses directly or indirectly caused by or contributed to by or arising from, or in connection with, any Computer System whether or not the property of the Insured, not being Year 2000 Compliant.

In addition this insurance shall not indemnify the Insured in respect of any Claim, Loss, liability or costs or expenses directly or indirectly caused by, contributed to, or arising from or in connection with and/or any attempted correction, conversion, renovation, rewriting or replacement of any Computer Systems, related to Year 2000 Compliance.

4.12 Inadequate Qualifications

with advice, Professional Services or treatment or tuition other than advice, Professional Services, or treatment, or tuition, within the standard of professional skill set down by the Insured's professional association or body or the accepted standard of professional skill required or to be reasonably expected of others in that profession.

4.13 Teaching or Tuition

any teaching, or tuition, delivered by, or undertaken with the Insured.

4.14 Unfit to practice

performing or providing Professional Services whilst unfit to perform or provide the Professional Services including being under the influence of intoxicants, narcotics or hallucinogens.

4.15 Pollution

- (a) the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or

- (b) any direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or any voluntary decision to do so, including but not limited to any Claim for financial loss to the Insured, its security holders or its creditors based upon, arising from, or in consequence of the matters described in (a) or (b) of this exclusion.

4.16 Asbestos

bodily injury, disease, emotional distress, or any other mental, psychiatric, emotional or physical injury, or death of any person, or damage to or destruction of any tangible property including both loss of use thereof and/or consequential loss directly or indirectly caused by or arising from:

- (a) mining, processing, transport, distribution and/or storage of asbestos; or
(b) manufacture of asbestos products or processing materials containing asbestos; or
(c) any process of decontamination, treatment or control of asbestos.

Exclusion 4.14(c) shall apply to those Claims arising in consequence of inhalation of asbestos fibre, damage to, or loss of use of property due to the presence of asbestos.

4.17 Fungi – Toxic Mould

- (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 governmental 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.

4.18 Contractors and/or Sub-contractors

work performed by contractors and/or sub-contractors for or on behalf of the Insured.

4.19 Sexual Abuse or Misconduct

actual or alleged sexual abuse or misconduct by the Insured which shall mean but is not limited to, physical abuse, sexual assault, molestation, indecent interference, sexual harassment or coercion of any person or licentious or immoral behaviour or attempt thereof or their consequences.

4.20 Criminal Acts

the involvement of the Insured with any proven criminal act whatsoever.

4.21 Inadequate Insurance

failure to effect or maintain any or any adequate insurance.

4.22 Insolvency, Bankruptcy or Liquidation

the insolvency, bankruptcy or liquidation of the Insured.

4.23 Wrongful Employment Act

any actual or alleged Wrongful Employment Act.

4.24 Trading Debt or Professional Fee or Charge

liability to pay a trading debt incurred by any Insured or to refund any professional fee or charge (by way of damages or otherwise) of the Insured.

4.25 Insured v. Insured and Family Members

made by any other Insured party or any Family Member of the Insured.

4.26 Related Entity, Facility or Arrangement

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:

- (a) was managed or controlled wholly or in part by the Insured or any nominee(s) of the Insured, or any Family Member of the Insured; or
(b) in which the Insured or any Family Member of the Insured had a direct or indirect financial interest.

4.27 Infringement of Copyright, Trademarks or Privacy

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 except to the extent covered under clause 2.10 of this Contract.

4.28 Duty Outside Normal Conduct of Business

any duty or obligation assumed by the Insured which is not assumed in the normal conduct of the Professional Business.

4.29 Instrument Use

or any development thereof which may arise out of or in respect to the use of any instrument and/or needles whilst conducting the Insured's Professional Services unless the following is adhered to:

- (a) hypodermic needles are used once only; and
(b) any instrument having need to conduct, contact or penetrate body tissue will either be used once only and discarded or will be sterilised in an approved autoclave before re-use.

4.30 Additional Exclusions Applying to Optional Extension 3.2 - Public Liability

Underwriters shall not be liable under Optional Extension 3.2 for any Claim(s) or Loss made against the Insured arising directly or indirectly from or in connection with:

4.30.1 Vehicle

the ownership, possession, operation, use or legal control by the Insured of any Vehicle:

- (a) which is registered; or
(b) in respect of which insurance is required by virtue of any legislation relating to motor vehicles; or
(c) which is otherwise insured in respect of the same liability.

Provided that this Exclusion does not apply to Vehicles whilst being operated or used by any Insured as a Tool of Trade.

4.30.2 Aircraft and Watercraft

the ownership, possession, operation, use or legal control by or on behalf of the Insured of any Vehicle, Aircraft or aerial device, hovercraft or Watercraft.

4.30.3 Boilers

explosion of boilers or other vessels under pressure in respect of which a certificate is required to be issued under the terms of any Statute or Regulation thereunder.

4.30.4 Erection or Demolition

bodily injury or damage to property arising directly or indirectly out of or caused by, or in connection with, the erection, demolition, alteration and/or addition to buildings by or on behalf of the Insured except an alteration or addition not exceeding in cost the sum of \$20,000 and any sum paid by Underwriters is part of, and not in addition, to the Sum Insured.

4.30.5 Faulty Workmanship

faulty workmanship of any kind.

4.30.6 Vibration

damage to any land or property arising directly or indirectly from vibration or from the removal or weakening of or interference with the support to land buildings or any other property.

4.30.7 Property Ownership

the ownership by the Insured of properties other than those at the Insured's practice address.

4.30.8 Territorial Limits

- (a) bodily injury including death and illness suffered; or
 - (b) damage to property, damage including loss of property sustained; or
 - (c) tenants liability; or
 - (d) goods sold and supplied
- outside the Territorial Limits of the Commonwealth of Australia, Papua New Guinea or New Zealand.

All Exclusions 4.1 to 4.30.8 or by endorsements shall apply to any payments or indemnity sought by any Insured under this Contract..

SECTION 5. CONDITIONS

5.1 Underwriter's Obligations

Each subscribing Underwriter's 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.

5.2 Sum Insured

The total liability of Underwriters under this Contract shall not exceed the Sum Insured:

- (a) for any one Claim and in the aggregate for all Claims during the Period of Insurance inclusive of Defence Costs;
- (b) for any one Claim whether covered by one or more Insuring Clauses, Automatic Coverage or Optional Extensions inclusive of Defence Costs.

5.3 Excess

In respect of each and every Claim the Insured must pay the Excess. Where a Claim does not exceed the Excess the Insured must also pay the costs and expenses incurred in investigating, defending and settling that Claim.

Where the Excess is shown to be Costs Inclusive the Insured must pay all costs and expenses incurred in investigating, defending and settling a Claim up to the amount of the Excess.

The Excess does not apply to any costs and expenses incurred by the Underwriters to determine indemnity under the Contract.

5.4 Multiple Claims

Where more than one Claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those Claims will together constitute one Claim for the purpose of this contract and determining the Excess.

5.5 Alteration to Risk

The Insured must give notice to Underwriters in writing as soon as practicable of any material change to the risk. A material change to the risk includes without limitation activities that are materially different from those declared in the proposal form or that are outside the normal activities of the Professional Business specified in the Schedule or a material change to the Professional Business specified in the Schedule.

5.6 Association Membership

The Insured must as a condition precedent to their right to be indemnified under this contract, at all material times, belong to and remain a full member of the Insured's recognised Australian professional association or body and duly qualified to render Professional Services.

5.7 Reporting of Claims

The Insured must as a condition precedent to their right to be indemnified under this Contract give to Underwriters immediate 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.

5.8 Defence and Settlement of Claims

Underwriters are entitled at any time to conduct, in the name of the Insured, the investigation defence or settlement of any Claim. If Underwriters believe that the Claim will not exceed the Excess, Underwriters may instruct the Insured to conduct investigation, defence and settlement at the Insured's expense. Should the Claim subsequently exceed the Excess, PROVIDED that their prior written consent has been obtained, Underwriters agree to reimburse the reasonable costs and expenses incurred by the Insured in investigating, defending and settling the Claim.

Should Underwriters elect to do so, they may discharge their total liability under this Contract by paying the available Sum Insured to the Insured.

5.9 Claims Co-Operation

The Insured agrees to use all of its best endeavours to avoid or diminish a Claim and will provide at their own cost all information and assistance to Underwriters as is required to determine liability under the Contract and investigate, defend and settle a Claim.

5.10 Subrogation

If any payment is made under this Contract in respect of a Claim or Loss, 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.

5.11 Contesting Claims

The Insured shall not admit liability for or settle any Claim or incur any costs or expenses in connection therewith without the written consent of Underwriters who shall be entitled to take over conduct, in the name of the Insured, the defence or settlement of any Claim. Nevertheless, the Insured shall not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Underwriters but failing agreement, to be appointed by the current President of the Institute of Arbitrators and Mediators Australia) shall advise that such proceedings should be contested. The costs incurred in obtaining counsel's advice will, in each case, be payable by the party requiring such advice.

5.12 Fraud

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, all benefit hereunder shall be forfeited.

5.13 Mitigation

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.

5.14 Recovery

In the event of a Claim under the Dishonesty of employees cover and Fidelity extension, 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.

5.15 Severability

Where any person fails to comply with their duty of disclosure, makes a misrepresentation or is in breach of a contract term or condition, Underwriters will not deny indemnity to any other person on these grounds if that other person was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach the contract term or condition.

5.16 Allocation

- (a) If a Claim covered by this Contract includes Loss which is not covered by this Contract, either because a Claim against the Insured includes both covered and uncovered matters, or because a Claim is made against both an Insured and others not insured hereunder, the Insured and Underwriters shall use their best efforts to agree upon a fair and proper allocation between covered Loss and uncovered Loss.
- (b) If the Insured and Underwriters cannot agree on an allocation of Loss Underwriters may submit the dispute to arbitration. The arbitration panel shall consist of one arbitrator selected by the Insured, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators.
- (c) Any arbitrated or judicially determined allocation of Loss on account of a Claim shall be applied retrospectively to all Loss on account of such Claim. Any allocation or advancement of Loss on account of a Claim shall not apply to or create any presumption with respect to the final allocation of Loss.

5.17 Notice

All notifications to Underwriters will be deemed given if notified in writing to:

**Resource Underwriting Pacific Pty Ltd
Level 8, 22 William Street
Melbourne VIC 3000**

5.18 Jurisdiction and Service of Suit

Underwriters agree that:

- (a) in the event of a dispute arising under this insurance, 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 Underwriters may be served upon Mr Peter Black of Peter Black & Associates, Level 8, 114 William Street, Melbourne, VIC 3000, 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.

5.19 Preserve Evidence

The Insured shall use their best endeavours to preserve any damaged or defective appliances, plant or property or things which might prove necessary or useful by way of evidence in connection with any Claim and so far as may be reasonably practicable, no alteration or repair shall be made to any premises, fencing, machinery, furnishings, fittings, appliances, or plant or property without the consent of Underwriters until Underwriters shall have had an opportunity of inspection.

5.20 Reasonable Care

The Insured shall exercise reasonable care that only competent employees are employed and shall take all reasonable precautions to prevent bodily injury or damage to property and shall take reasonable measures to maintain all premises, furnishings, fittings, appliances and plant in sound condition and to comply with all statutory obligations and by-laws or regulations imposed by any public authority for the safety of persons or property.

5.21 Construction/Interpretation

- (a) Clause headings 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.

5.22 Goods and Services Tax Neutrality

Underwriters and the Insured agree that to the extent possible as between them neither is to be adversely affected or advantaged by the operation of "GST". If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit the other party will provide such invoice or assistance promptly upon being requested to do so.

For the purpose of this Condition "GST" means tax payable under A New Tax System (Goods and Services Tax) Act 1999 and, unless the context otherwise requires, other expressions used in this section have the meaning given to those expressions in that Act.

5.23 Valuation and Foreign Currency

All premiums, limits, retentions, loss and other amounts under this Contract are expressed and payable in Australian currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of Loss under this Contract is stated in a currency other than Australian dollars, payment under this Contract shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars published in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of Loss is due, respectively.

SECTION 6. DEFINITIONS

- 6.1 Accident** means any unexpected or unintended happening including continuous and repeated exposure to conditions which result in bodily injury or damage to property and for which the Insured is not entitled to indemnity under Section 1 of this Contract of Insurance.
- All such exposure to substantially the same general conditions shall be deemed to be one Accident.
- 6.2 Claim(s)** means:
- (a) any Writ, Summons, Application or other originating legal or arbitral process, cross-Claim, counter-Claim, served upon any Insured alleging a breach of professional duty in the conduct of the Insured's Professional Business; or
 - (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.
- 6.3 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 microcode.
- 6.4 Contract** means this Contract wording including the Schedule, any additional endorsements and the proposal form and underwriting information provided to Underwriters.
- 6.5 Defence Costs** means all reasonable costs, charges, fees (including but not limited to legal counsel's fees and expert's fees) incurred in defending Claims in respect of any alleged breach of duties by the Insured in the conduct of their Professional Business. Defence Costs do not include any wages, salaries or fees of the Insured.
- 6.6 Documents** means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any other method but shall not include any bearer bonds or coupons, cheques, stamps, bank or currency notes or other negotiable instruments.
- 6.7 Excess** means the amount specified as the Excess in the Schedule.
- 6.8 Family Member** means the spouse (or other person who lives with the Insured as a de-facto spouse, partner or companion) parent, parent of such spouse, sibling or any of the children of the Insured or such spouse.
- 6.9 Insured** means:
- (a) the person, persons, partnership, company, corporation or other entity specified in the proposal and employees thereof being the basis of this Insurance; and
 - (b) any person who is during the Period of Insurance, a principal, partner, director, or employee of the Insured in respect of work performed for and on behalf of the Insured in connection with the Professional Business; and
 - (c) any former principal, partner, director or employee of the Insured in respect of work performed for and on behalf of the Insured in connection with the Professional Business; and
 - (d) the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of that Insured, but only to the same extent as cover would have otherwise been available to the Insured, and subject always to the terms and conditions of this Contract; and
 - (e) any student, trainee or apprentice assigned to the Insured by a University, College of Advanced Education or TAFE College under the supervision of the Insured at all times.
- 6.10 Loss** means the total amount which any Insured becomes legally obliged to pay on account of a claim including, but not limited to, damages, judgements, settlements, costs and Defence Costs.
- 6.11 Period of Insurance** shall mean the period specified in the Schedule.
- 6.12 Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste (including material to be recycled, reconditioned or reclaimed).
- 6.13 Professional Service(s)** means service(s) performed or provided by the Insured in the conduct of the Professional Business specified in the Schedule and which are conducted under the name specified as the Insured in the Schedule.
- 6.14 Retroactive Date** means the Retroactive date specified in the Schedule.
- 6.15 Sum Insured** means the amount specified as the Sum Insured in the Schedule.
- 6.16 Wrongful Employment Act** means any Wrongful Act committed or attempted in connection with the employment by the Insured of a person including: 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).
- 6.17 Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by any Insured individually or otherwise.
- 6.18 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; and
 - (d) the Year 2000 must be recognised as a leap year.

Definitions applying to Optional Extension 3.2 - Public Liability

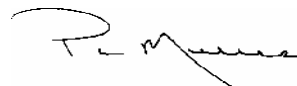
In this extension:

- 6.19 Compensation** means money paid or payable by reason of a judgment ordered against the Insured by a Court of Record or by reason of any settlement of a Claim negotiated with Underwriters' consent. It does not include any punitive, exemplary, multiple or aggravated damages, or fines or penalties imposed by law or any investigation or Defence Costs arising as a consequence thereof.
- 6.20 Vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power, and any trailer made or intended to be drawn by such machine, and any hovercraft.
- 6.21 Watercraft** means any vessel, craft or thing made or intended to float on, or in, or travel on or through water.
- 6.22 Aircraft** means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.
- 6.23 Tool of Trade** means any Vehicle(s) which has a tool or plant forming part of, or attached to, or used in connection with it, while such tool or plant is engaged on a work site, but does not include:
- (a) Vehicles whilst in transit to or from any worksite; or
 - (b) Vehicles used for transport or haulage.

To be valid, this Contract must have attached to it the Schedule signed by an authorised officer of Resource Underwriting Pacific Pty Ltd.

THIS IS TO CERTIFY that in accordance with the authorisation granted to Resource Underwriting Pacific Pty Ltd 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:-
Resource Underwriting Pacific Pty Ltd
AFS Licence No: 247340



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Paul L Muller
Managing Director

Resource Underwriting Pacific Pty Ltd 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.

Resource Underwriting Pacific Pty Ltd 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 Resource Underwriting Pacific Pty Ltd's privacy policy. A copy of our policy can also be obtained from our offices in Melbourne or Sydney or from our website at www.ruppl.com.au