



Woodina
Underwriting Agency

**Professional Indemnity Insurance
Policy Wording**

Property Valuers

Nov 18

Section 1 Preamble

Subject to payment of the **Premium** or as agreed in writing, **We** agree to provide indemnity in accordance with and subject to the terms and conditions of this **Policy**.

Before this **Policy** commenced **We** received information provided on behalf of the **Insured** in the **Proposal** and in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this **Policy**.

Any word or expression to which a specific meaning has been attached shall bear that special meaning wherever they appear. If a word has a specific meaning it appears in the **Policy** in bold black type and with a capital letter. The meanings of these words can be found in Section 9 Definitions.

Section 2 Insuring Clause

We agree to indemnify the **Insured**, up to the **Limit of Indemnity**, against civil liability for compensation to any third party arising from any **Claim** as a result of the conduct of the **Insured's Professional Services** that is:

- i. first made against the **Insured** during the **Period of Insurance**; and
- ii. notified to **Us** during the **Period of Insurance**; and
- iii. committed after the **Retroactive Date**.

We also agree to pay **Costs and Expenses** incurred with **Our** written consent in the defence or settlement of any **Claim** indemnified by this **Policy**. It is agreed that \$500,000 of the **Limit of Indemnity** is allocated to **Costs and Expenses** pursuant to the Australian Property Institute Valuers Limited Liability Insurance Standards.

Section 3 Insuring Clause Clarification

For the purpose of clarifying the scope of cover under the Insuring Clause, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this **Policy**;

3.1 Breach of Confidentiality

We will indemnify the **Insured** in respect of a **Claim** arising from the performance of **Professional Services** alleging breach of confidentiality by the **Insured**.

3.2 Competition and Consumer Legislation

We agree to indemnify the **Insured** in respect of any **Claim** made against the **Insured** under the terms of the Competition and Consumer Act 2010 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

3.3 Defamation

We agree to indemnify the **Insured** in respect of any **Claim** made against the **Insured** arising from unintentional libel, slander, defamation or injurious falsehood by the **Insured**.

3.4 Implied Warranties and Conditions

Notwithstanding Exclusion 6.1 Contractual Liability **We** will indemnify the **Insured** against civil liability arising from a breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law or legislation resulting from the **Insured's** performance of **Professional Services**.

3.5 Intellectual Property

We agree to indemnify the **Insured** in respect of a **Claim** made against the **Insured** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

3.6 Privacy

We agree to indemnify the **Insured** in respect of a **Claim** arising from the performance of **Professional Services** alleging unlawful interference with privacy by the **Insured**.

3.7 Retroactive Date

“Unlimited Retroactive Cover” – if no **Retroactive Date** is specified in the **Schedule** or if the **Retroactive Date** is specified in the **Schedule** as “Unlimited”, this **Policy** shall provide indemnity in respect of **Claim** arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).

“Limited Retroactive Cover” – where a **Retroactive Date** is specified in the **Schedule**, then this **Policy** shall only provide indemnity in respect of **Claims** arising from acts, errors or omissions committed or alleged to have been committed after the **Retroactive Date**.

Section 4 Automatic Extensions

We shall provide indemnity as is available under this Section, for no additional premium, provided always that:

The indemnity provided by each **Policy** Extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **Deductible** and other terms of this **Policy** (unless otherwise expressly stated herein);

The inclusion of any **Policy** extension shall not increase the **Limit of Indemnity**.

4.1 Continuous Cover

Where the **Insured**:

- i. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- ii. had not notified **Us** of such facts or circumstances prior to the **Period of Insurance**,

then Exclusion 6.9 will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such facts or circumstances, provided that:

- a) the **Insured's** failure to notify is not fraudulent; and
- b) the **Insured** has been continuously insured, without interruption at the time of notification of the **Claim** to **Us**, under a policy issued by an ASIC approved insurer and was insured by such an insurer or **Woodina Underwriting Agency Pty Ltd** at the time the **Insured** first became aware of such facts or circumstances; and
- c) **We** may reduce our liability under the **Policy** to the extent of any prejudice **We** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**; and
- d) the **Limit of Indemnity We** provide shall be the lesser available under the policy in force when the **Insured** first became aware of the facts or circumstances or under this **Policy**. The terms of this **Policy** otherwise apply.

4.2 Court Attendance Costs

We agree to provide up to \$250 per day for **Court Attendance Costs** incurred by **Employees** of the **Insured**, or up to \$500 per day for **Court Attendance Costs** incurred by partners, principals or directors of the **Insured** if they are legally compelled to attend a civil proceeding as a witness in a **Claim** covered by this **Policy**.

Our total aggregate liability during any one **Period of Insurance** for all **Court Attendance Costs** shall not exceed \$50,000 and \$2,500 per day, and shall be part of and not in addition to the **Limit of Indemnity** as shown on the **Policy Schedule**.

4.3 Enquiry Costs

We will indemnify the **Insured** for **Enquiry Costs** provided that:

- i. notice requiring the **Insured's** response or attendance is first received by the **Insured** and is notified to **Us** during the **Period of Insurance**;
- ii. such response or attendance arises directly from conduct committed or allegedly committed by the **Insured** in the performance of the **Professional Services**;
- iii. such indemnity is subject to the written consent of **Us** prior to the incurring of the **Enquiry Costs**;
- iv. **We**, at **Our** discretion, are entitled to appoint legal representation to represent the **Insured** at the inquiry or hearing;
- v. regular or overtime wages, salaries or fees of the **Insured** are excluded from indemnity under this extension;
- vi. **Our** total aggregate liability during any one **Period of Insurance** in respect of **Enquiry Costs** made under this policy extension shall not exceed \$250,000 and shall be part of and not in addition to the **Limit of Indemnity** as shown in the **Policy Schedule**.

4.4 Fraud and Dishonesty

We agree to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against that **Insured**, which would otherwise be excluded by reason of Exclusion 6.3 (fraud and dishonesty), arising from any dishonest, fraudulent, criminal or malicious act or omission, by an **Insured**.

Provided always that such indemnity shall not be provided to any **Insured** who committed, allowed, or condoned any dishonest, fraudulent, criminal or malicious act or omission.

4.5 Joint Venture Liability

We agree to indemnify the **Insured** in respect of any **Claim** resulting from the **Insured's** participation in any joint venture in connection with the **Professional Services** provided that:

- i. the indemnity provided shall only relate to the **Insured's** proportion of any liability by such joint venture; and

- ii. the **Insured's** income derived from participation in the joint venture has been included in the calculation of income furnished by the **Insured** in the **Proposal Form**.
- iii. no cover is provided to the joint venture partner of the **Insured**.

4.6 Contractual Liability

Notwithstanding Exclusion 6.1 Contractual Liability, **We** will indemnify the **Insured** in respect of a **Claim** under an indemnity or hold harmless term of a contract to the extent civil liability results from the **Insured's** performance of the **Professional Services**, so long as such term does not restrict **Our** right to claim contributory negligence by a lender client.

4.7 Loss of Documents

We agree, in the event of loss or damage to **Documents**, to indemnify the **Insured** against all **Costs and Expenses** reasonably incurred by the **Insured** in replacing and restoring such documents provided that:

- i. such loss or damage is sustained during the **Period of Insurance** while the **Documents** are either in transit or in the custody of the **Insured** or any person to whom the **Insured** has entrusted them in the course of the normal conduct of the **Professional Services**;
- ii. where the **Documents** are in electronic format, the **Insured** or any person to whom the **Insured** has entrusted them, have in place sufficient and proper procedures for the security and daily back-up of the **Documents**;
- iii. the amount of any **Claim** for such **Costs and Expenses** shall be supported by bills or accounts which shall be subject to approval by **Us** or a competent person nominated by **Us**;

We shall not be liable for loss or damage to **Documents** caused by:

- a) riot or civil commotion;
- b) fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause;
- c) any computer virus;
- d) interference with electronically stored data by any person who is not a current principal, partner, director or **Employee** of the **Insured**.

4.8 New Subsidiary

We agree to include in the definition of **Insured** to include any **Subsidiary** created by the **Insured** during the **Period of Insurance** for a period of up to 45 days (but never beyond the expiry date of the period of cover) from the date of such creation.

Provided always that this policy extension will only apply in respect of **Claim** against the **Subsidiary** arising from an act, error or omission occurring subsequent to the date of creation of the **Subsidiary**.

4.9 Period of Grace

If the **Policy** is neither renewed nor replaced by the **Insured** with a policy or policies providing similar cover then the **Insured** is entitled to an automatic extended policy period of 30 days commencing from the end of the **Policy Period** during which time the **Insured** may notify any claim under the **Policy** to **Us** provided it results from **Professional Services** performed prior to the end of the **Period of Insurance**.

4.10 Public Relations Costs

We will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by an **Insured** with **Our** prior written consent (which shall not be unreasonably withheld) in seeking advice from a public relations consultant solely for the benefit of protecting the **Insured's** professional reputation as a result of **Professional Services** performed by the **Insured** which have lead to a **Claim** being made against the **Insured**.

4.11 Run Off

We agree that in the event that an insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this **Policy** with respect to such insured entity shall continue until the expiry date of the **Period of Insurance**. Provided always that such coverage shall only apply in respect of **Claims** arising from an act, error or omission occurring prior to the effective date that such insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

It is agreed that if further run-off cover is required from the end of the **Period of Insurance**, **We** will consider the provision of a six or seven year single premium policy from such date at that time, subject to **Our** assessment of the **Insured's** claims record and work breakdown and the appropriate premium. There is otherwise no automatic run off cover provided after the end of the **Period of Insurance**.

4.12 Spouses, Estates and Representatives

In the event of the death, incapacity or bankruptcy of an **Insured**, **We** will cover any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives, or

against the lawful spouse or domestic partner of an **Insured**, as if the **Claim** had been brought against that **Insured**.

4.13 Sub-Contractors

This **Policy** covers any sub-contractor, sub-consultant or agent performing work pursuant to a contract with the **Insured**, where such work is performed as part of the **Insured's Professional Service** and under the **Insured's** direct supervision and control.

Section 5 Optional Extensions

It is agreed that:

- i. the indemnity provided by each Optional Extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this **Policy** (unless otherwise expressly stated herein);
- ii. the optional extensions do not increase the **Limit of Indemnity**;
- iii. where an Optional Extension is not specified as included in the **Schedule** then this **Policy** shall not provide any indemnity in relation to coverage specified under such Optional Extension.

5.1 Previous Business

We agree to provide indemnity in respect of any **Claim** for compensation made against any person who is or becomes or ceases to be during the **Period of Insurance** a principal, partner or director of the **Insured** for any civil liability arising from a breach of professional duty and incurred on the part of such person in the conduct of the same profession as the **Insured's Professional Services** before that person joined the **Insured**.

5.2 Proportionate Liability

Exclusion 6.1 Contractual Liability will not apply to a liability which the **Insured** has assumed under a contract by reason of having contracted out of the operation of proportionate liability legislation.

Section 6 Exclusions

We shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against any **Insured**:

6.1 Contractual Liability

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an **Insured** by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract, warranty, guarantee or indemnity at common law.

6.2 Fines and Penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but limited to, civil penalties.

6.3 Fraud and Dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

- i. any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an **Insured** or their consultants, sub-contractors or agents; or
- ii. any act or omission of an **Insured** or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- iii. any wilful breach of any statute, contract or duty by an **Insured** or their consultants, subcontractors or agents.

6.4 Insolvency

directly or indirectly based upon, attributable to, or in consequence of the **Insured's** insolvency, bankruptcy or liquidation.

6.5 Investment Advice

directly or indirectly based upon, attributable to, or in consequence of any investment advice, or information or opinion regarding investment (including allegations of or in connection with the failure by the **Insured** to provide investment advice or information) provided by or on behalf of the **Insured**.

6.6 Jurisdictional Limits

- i. brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- ii. arising out of the enforcement of any judgement, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

6.7 Nuclear

directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of any nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

6.8 Other Insurances

directly or indirectly based upon, attributable to, or in consequence of:

- i. the **Insured's** liability as an employer; or
- ii. actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant; or
- iii. the **Insured's** functions and duties as a director or officer of the **Insured** or any legal entity, corporation or other incorporated body; or
- iv. the occupation of land or buildings by the **Insured**; or
- v. the **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.9 Prior or Pending

- i. made, threatened or intimated against an **Insured** prior to the **Period of Insurance**; or
- ii. directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
 - a) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - b) of which an **Insured** first became aware prior to the **Period of Insurance**, and which such **Insured** knew or ought reasonably to have known had potential to give rise to a **Claim** under this **Policy**.

6.10 Related or Associated Entities

brought or maintained by or on behalf of:

- i. an **Insured** or any **Subsidiary** or parent of an **Insured**; or
- ii. any person who, at the time of the act, error or omission giving rise to the **Claim** is a **Family Member** or company owned or controlled by a **Family Member** unless such person or company is acting without any prior direct or indirect solicitation or cooperation of an **Insured**.
- iii. any company or trust which is operated or controlled by an **Insured** or its nominees or trustees and which an **Insured** has a direct financial interest.

6.11 Retroactive Date

arising from work performed prior to the **Retroactive Date** specified in the **Schedule**.

6.12 Sale or Supply of Goods

directly or indirectly based upon, attributable to, or in consequence of the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied by the **Insured**.

6.13 Territorial Limits

directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

6.14 Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of **Terrorism** or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of **Terrorism**.

This Exclusion operates in connection with any act of **Terrorism** regardless of any other cause or event and regardless of the sequence of the act of **Terrorism** and the other cause or event.

6.15 Trading Debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an **Insured** or any guarantee given by an **Insured** for a debt.

6.16 War

directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

6.17 Cyber Attack

directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

Section 7 Valuation Addenda

7.1 Assignment Clause

We will not indemnify the **Insured** for legal liability directly or indirectly based upon, attributable to, or in consequence of:

- i. the assignment of a valuation ('the initial valuation');
- ii. the confirmation of the initial valuation;
- iii. the reissue of the initial valuation; or
- iv. any other act which has the effect of assuming or of extending responsibility to any person other than the person, other than the person or persons to whom the initial valuation was addressed,

provided by the **Insured** unless:

- a) the initial valuation was dated within 3 months of the request for the assignment, confirmation, reissue or other act; and
- b) such assignment, confirmation, reissue or other act is provided together with a clear written statement that the valuer has not reinspected the property nor undertaken further investigation or analysis as to any changes since the initial valuation and accepts no responsibility for reliance upon the initial valuation other than as a valuation of the property as at the date of the initial valuation.

However, the above exclusion does not apply to a revaluation where the **Insured** has reinspected the property and undertaken further investigation and analysis of relevant property specific and market changes consistent with usual valuation practice for undertaking revaluations and/or update valuations having regard to the type of property being valued.

Provided that this exclusion shall not apply to any assignment, confirmation, reissue or other act completed prior to the inception of this **Policy**.

7.2 Kerbside/Restricted Valuations

We will not indemnify the **Insured** for legal liability directly or indirectly based upon, attributable to, or in consequence of kerbside valuations, restricted valuations or restricted assessments unless conducted in strict accordance with guidelines established by the Restricted Valuation Supporting memorandum as set down by the Australian Property Institute.

This Exclusion does not apply to municipal valuations including local government financial reporting, asset and insurance valuations or regulatory rate or tariff setting (including where adopted for use for land tax purposes) or that relates to a mortgagee in possession valuation or insolvency-related valuation where access to the property is limited, prohibited or not available.

7.3 Solicitor Loans

We will not indemnify the Insured for legal liability directly or indirectly based upon, attributable to, or in consequence of any valuation of real property carried out by the Insured:

- i. for or on behalf of a Solicitor Lender or any person lending money through a Solicitor Lender; or
- ii. for which responsibility is accepted to any Solicitor Lender or any person lending money through a Solicitor Lender.

“Solicitor Lender” means any solicitor involved in arranging, controlling, managing, broking or otherwise inducing the lending of money on mortgage security (including but not limited to any solicitor controlled or managed mortgage fund) BUT shall not include any mortgage fund registered as a Managed Investment Scheme.

7.4 Managed Investment Schemes

We will not indemnify the Insured for legal liability directly or indirectly based upon, attributable to, or in consequence of a valuation carried out by the Insured in connection with any managed investment scheme, as defined under section 9 of the Corporations Act 2001 (Cth) which;

- i. has as its prime and substantial purpose the provision of tax benefits to investors; or
- ii. is involved in any form of direct or indirect investment in primary production (including property used for primary production).

7.5 Development Valuations

We will not indemnify the **Insured** in respect to any claim arising out of a development valuation prepared for mortgage purposes on an “as if complete” basis unless:

- 1) it also contains a value on an “as is” basis as at the date of inspection; and
- 2) where the proposed development does not have current development approval at the date of valuation, the valuation report clearly states that the “as if complete” valuation should not be relied upon until such development approval has been issued.

A development valuation means a valuation of:

- a) vacant land assessed on the basis of its use as a development site;
- b) an improved property on land where the improvements are to be demolished and then the land redeveloped;

provided that this definition does not extend to a valuation where the proposed development involves one or two residential dwellings on the one Certificate of Title.

For the sake of clarity, a development valuation for the purposes of this clause is for construction finance purposes, development funding purposes or other lending arrangement specifically for the purpose of financing the project. It does not include a valuation of a property for the purpose of pre-sale, pre-purchase, compensation, family law, rating and taxing, municipal, financial reporting, capital gains tax or estate advice.

7.6 Market Movement

We will not indemnify the **Insured** for legal liability directly or indirectly based upon, attributable to, or in consequence of any valuation undertaken by the **Insured** where such valuation report does not include the following or similar clause:

“This valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 3 months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.”

7.7 Prudent Lenders

We will not indemnify the **Insured** in respect of any **Claim** relating to a valuation of real property for any lender unless:

- i. the lender is an authorised deposit taking institution within the meaning of the Banking Act 1959; or
- ii. the valuation includes the following or similar clause:

"This valuation is prepared on the assumption that the lender as referred to in the valuation report (and no other), may rely on the valuation for mortgage finance purposes and the lender has complied with its own lending guidelines as well as prudent finance industry lending practices, and has considered all prudent aspects of credit risks for any potential borrower, including the borrower's ability to service and repay any mortgage loan. Further, the valuation is prepared on the assumption that any such lender is providing mortgage financing at a conservative and prudent loan to value ratio."

Section 8 Claims conditions

8.1 Claims Notification

The **Insured** shall, as soon as practicable and prior to expiry of the **Period of Insurance**, give **Us** written notice of any **Claim** made against the **Insured**. Furthermore every letter, demand, writ summons and legal process pertaining to such **Claim** shall be forwarded to **Us** as soon as practicable after receipt.

All **Claim** notifications should be forwarded to;

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
BRISBANE QLD 4001

Or Email: claims@woodina.com.au

It is the **Insured's** responsibility to ensure such notification has been forwarded to and received by **Woodina Underwriting Agency Pty Ltd**.

8.2 Claims Mitigation and Co-operation

If the **Insured**, either prior to or during the **Period of Insurance** becomes aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, the **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid and diminish any liability hereunder.

The **Insured** shall frankly and honestly disclose to **Us** all relevant information and, in addition shall provide assistance to **Us**, as **We** may require to enable **Us** to investigate and to defend any **Claim** under this **Policy** or to enable **Us** to determine **Our** liability under this **Policy**.

Other than costs & expenses incurred by **Us** to enable **Us** to determine our liability under this **Policy**, compliance with this condition shall be at the **Insured's** own cost, unless otherwise agreed in writing by **Us**.

8.3 Claims Conduct

We shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses, Court Attendance Costs** or **Enquiry Costs**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **Our** written consent, such consent not to be unreasonably withheld. **We** shall not be liable for any settlement, **Costs and Expenses, Court Attendance Costs, Enquiry Costs**, admission, offer or payment, or assumed obligation to which they have not consented in writing.

We may, if **We** believe that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situation, **We** will reimburse the **Insured** for all reasonable **Costs and Expenses** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**.

8.4 Senior Counsel

We and the **Insured** shall not be required to contest any legal proceedings unless a **Senior Counsel**, to be mutually agreed upon by **Us** and the **Insured**, shall advise that such proceedings should be contested. Failing agreement for the appointment, the **Senior Counsel** is to be appointed by the President of the Queensland Bar Association.

In formulating such advice, the **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Costs & Expenses** and the prospects of the **Insured** successfully defending the **Claim**.

The costs of such **Senior Counsel's** opinion shall be regarded as part of the **Costs & Expenses**.

8.5 Right to Contest

In the event that **We** recommend a settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**. Provided always that **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Costs and Expenses** incurred with **Our** written consent up to the date of such election, less the **Deductible**.

8.6 Multiple Claims

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one **Claim** for the purpose of this **Policy**.

8.7 Subrogation

If any payment is made under this **Policy**, **We** are subrogated to the **Insured's** rights of recovery and the **Insured** must assist and provide such information as **We** reasonably require to exercise such rights.

We agree not to exercise any such rights against any director, principal or **Employee** of the **Insured** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, principal or **Employee**.

The **Insured** shall not without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the **Insured** may have in respect of any **Claim** covered by this **Policy**.

Section 9 General Conditions

9.1 Alteration to Risk

The **Insured** must notify **Us** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **We** are entitled to amend the terms of this **Policy** and / or charge an additional premium based on **Our** assessment of any change in the risk insured by this **Policy**.

A material change in the risk shall include, but is not limited to;

- i. an **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- ii. any material change to the nature of the **Professional Services** offered by the **Insured**.
- iii. any material change in the **Insured's** business.

9.2 Assignment

This **Policy** cannot be assigned by the **Insured** without **Our** written consent.

9.3 Cancellation

The **Insured** may cancel this **Policy** at any time in writing to **Us**. Upon receipt of such request **We** will retain a short period premium at the pro rata portion of the annual premium for the time they have been on risk plus ten percent (10%), subject to a minimum retained premium of \$500, and the **Insured** shall receive a refund of any balance of the **Premium** actually paid.

We may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

If there have been any **Claims** made under the **Policy** no refund shall be given.

9.4 Deductible

We shall only be liable for that part of each and every **Claim** (which includes all **Costs and Expenses** incurred) which exceeds the amount of the **Deductible** as specified in the **Schedule** subject at all times to the **Limit of Indemnity** specified in the **Schedule**.

The **Deductible** shall be borne by the **Insured** at their own risk but is exclusive of **Costs and Expenses** to the extent that such **Costs and Expenses** are the cost of time spent by the inhouse solicitors, claims managers and administrative staff of Woodina Law, acting on **Our** behalf. So the **Deductible** shall not apply to such **Costs and Expenses** incurred involving Woodina Law.

If any expenditure is incurred by **Us** which by virtue of this clause is the responsibility of the **Insured** then such amount shall be reimbursed to **Us** by the **Insured** forthwith.

9.5 GST Basis of Settlement

Where payment is made under the **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** is, or will be, entitled to under a New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of that payment by the amount of any input Tax credit that the **Insured** would have been entitled to under a New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

9.6 Governing Law

This **Policy** is governed by the law of the territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

9.7 Interpretation

In this **Policy**;

- i. the single includes the plural and the masculine includes the feminine and vice versa;
- ii. the titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

9.8 Limit of Indemnity

Our total liability in respect of any one **Claim** and in the aggregate for all **Claims**, including **Costs and Expenses**, shall not exceed the **Limit of Indemnity** as noted in the **Schedule**.

All **Claims** arising from the same breach of professional duty, or related breaches of professional duty shall be regarded as one **Claim**.

9.9 Other Insurance

If at the time any **Claim** arises under the **Policy** there is any other insurance in force covering the same liability the **Insured** shall promptly provide **Us** full details of such other insurance, including the identity of the insurer, the policy number and such further information as **We** may reasonably require.

9.10 Reinstatement of the Limit of Indemnity

If the **Limit of Indemnity** is either partially or totally exhausted by the payment of a **Claim** under this **Policy**, **We** agree to reinstate the Limit of Indemnity by an amount equal to the **Limit of Indemnity** (or a multiple of such **Limit of Indemnity** if there is more than one reinstatement under the **Policy**) provided that:

- i. **Our** total liability in respect of all **Claims** under this **Policy** shall not exceed the **Limit of Indemnity** as specified in the **Schedule**;
- ii. Such reinstatement is only available for subsequent **Claims** totally unrelated to those that give rise to the partial or total exhaustion of the **Limit of Indemnity**.

9.11 Sanctions

We shall not provide cover and **We** shall not be liability to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

9.12 Severability and Non Imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- i. comply with the duty of disclosure under the Insurance Contracts Act 1984;
- ii. comply with any obligation under this **Policy** (other than the obligation to pay premium);
- iii. Or refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining part or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

- a) be entirely innocent of and have no prior knowledge of any such failure; and
- b) as soon as practicable after becoming aware of any such failure, advise **Us** in writing of all its relevant circumstances.

9.13 Variation of the Policy

No variation of this **Policy** will be effective, unless made by **Endorsement** which is signed by a properly authorised employee of **Woodina Underwriting Agency Pty Ltd**.

9.14 Several Liability

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

Section 10 Definitions

10.1 Aggregate Limit of Indemnity

shall mean the amount shown as the **Aggregate Limit of Indemnity** in the **Schedule**.

10.2 Claim

shall mean:

- i. The receipt by the **Insured** of any demand for compensation made by a third party against the **Insured**.

- ii. Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured** which contains a demand for compensation made by a third party against the **Insured**.

10.3 Costs and Expenses

shall mean the reasonable legal costs and other expenses incurred by or on behalf of the **Insured** or by **Us** in the investigation, defence or settlement of a **Claim**.

10.4 Court Attendance Costs

shall mean the reasonable costs incurred by the **Insured** in attending a civil proceeding as a witness in a **Claim**. These costs shall include, but not be limited to travel expenses, locum expenses, meals, and accommodation.

10.5 Deductible

shall mean the amount shown as the **Deductible** in the **Schedule**.

10.6 Documents

shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

10.7 Employee

shall mean any person employed under a contract of service or apprenticeship with the **Insured** during or prior to commencement of the **Period of Insurance**.

10.8 Enquiry Costs

shall mean the necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice from an inquiring body requiring a response from the **Insured** or requiring the **Insured's** attendance at an investigation, inquiry or hearing before the inquiring body.

10.9 Family Member

shall mean:

- i. any spouse, domestic partner, or companion;
- ii. any parent, or parent of the spouse, domestic partner or companion;

- iii. any sibling or child;

of an **Insured**.

10.10 Insured

shall mean:

- i. the person, persons, partnership, company, corporation or other entity specified as the **Insured** in the **Schedule**.
- ii. any person who is, during the **Period of Insurance**, a principal, partner or director of the **Insured** but only in respect of work performed while a principal, partner or director of the **Insured**;
- iii. any person who is, during the **Period of Insurance**, an **Employee** of the **Insured** but only in respect of work performed while an **Employee** of the **Insured**; or
- iv. any former principal, partner, director or **Employee** of the **Insured**, but only in respect of work performed while a principal, partner, director or **Employee** of the **Insured**;
- v. any **Subsidiary** of the **Insured** named in the **Proposal**;
- vi. the spouse, estate, heirs, legal representatives or assigns of an **Insured** in the event of the death or incapacity of that **Insured**.

10.11 Limit of Indemnity

shall mean the maximum amount payable by the insurer in respect of any one **Claim** as specified in the **Schedule**.

10.12 Period of Insurance

shall mean the period specified in the **Schedule**.

10.13 Policy

shall mean:

- i. the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- ii. any endorsement attaching to or forming part of this **Policy** either at inception or during the **Period of Insurance**; and the **Proposal**.

10.14 Premium

shall mean the **Premium** specified in the **Schedule** or in any endorsement to the **Schedule**.

10.15 Professional Services

shall mean the profession, as specified in the **Schedule**, which is conducted by the **Insured**. If the **Insured** should change its name and there is no other change which materially alters the risk, the **Insured's** profession will continue to be covered by this **Policy**.

10.16 Proposal

shall mean the **Proposal** made by the **Insured** to **Us** containing particulars and statements which, together with other information provided by the **Insured**, are the basis of this **Policy** and are considered as incorporated herein.

10.17 Retroactive Date

shall mean the **Retroactive Date** shown in the **Schedule**.

10.18 Schedule

shall mean the **Schedule** of this **Policy**.

10.19 Senior Counsel

shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

10.20 Subsidiary

shall mean:

- i. any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the **Insured** specified in the **Schedule**; or
- ii. any entity over which a **Insured** is in a position to exercise effective direction or control.

10.21 Terrorism

shall mean 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, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar

purposes or reasons including the intention to influence any government and / or to put the public, or any section of the public, in fear.

10.22 We or Us or Our

shall mean certain underwriters at Lloyd's through their coverholder **Woodina Underwriting Agency Pty Ltd.**

10.2 Woodina Underwriting Agency Pty Ltd

shall mean **Woodina Underwriting Agency Pty Ltd** ABN 24 151 854 698.

Notices

The information contained in this section is general information only and does not form part of your contract with us.

Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to the insurer every matter which you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of insurance.

Your duty however does not require the disclosure of a matter:-

- that diminishes the risk to be undertaken by the insurer
- that is common knowledge
- that the insurer knows or, in the ordinary course of business as an insurer, ought to know as to which compliance with your duty is waived by the insurer.

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your nondisclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to the Insurer during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy
- (whether made or issued by the insurer or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

However, where you give notice in writing to the insurer of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before expiry of the period of insurance, the policy will, subject to its terms and conditions, cover you notwithstanding that a claim is only made after expiry of the period of insurance.

Privacy

Woodina Underwriting is committed to protecting the privacy of the personal information you provide us. Woodina Underwriting collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the person information we collect:

- To relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on (07) 3222 9400.

By completing and returning the proposal form and / or providing us with any additional information in connection with your application, you agree to us using and disclosing your

information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on (07) 3222 9400.

Code of Practice

This policy is compliant with the Insurance Council of Australia's General Insurance Code of Practice, apart from any claims adjusted outside of Australia. Woodina Underwriting Agency Pty Ltd and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the code is available from the Insurance Council of Australia's website at www.ica.com.au or from the Code's dedicated website at www.codeofpractice.com.au

Complaints Procedures

There are established procedures for dealing with complaints and disputes regarding your policy or claim.

Stage 1

Any enquiry or complaint relating to this insurance should, in the first instance, be referred to Woodina Underwriting Agency Pty Ltd – in most cases this will resolve your grievance.

We will respond to your complaint within 15 business days provided we have all necessary information and have completed any investigation required. Where further information, assessment or investigation is required, we will agree to reasonable alternative timeframes with you. You will also be kept informed of the progress of your complaint.

Stage 2

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact:

Lloyd's Australia Limited
Level 9, 1 O'Connell St
Sydney NSW 2000
Telephone: (02) 8298 0783
Email: idraustralia@lloyds.com

Lloyd's Australia will usually require the following information:

- Name, address and telephone number of the policyholder;
- Details of the policy concerned (policy and/or claim reference numbers, etc);
- Details of the insurance intermediary through whom the policy was obtained;
- Reasons why you are dissatisfied;
- Copies of any supporting documentation you believe may assist Lloyd's Australia in

addressing your dispute appropriately.

Following receipt of your complaint, you will be advised whether your matter will be handled by Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you:

- Where your complaint is eligible for referral to the Australian Financial Complaints Authority (AFCA), your complaint will generally be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.
- Where your complaint is not eligible for referral to AFCA, Lloyd's Australia will refer your complaint to the Lloyd's Complaints team in the UK if it falls within the jurisdiction of the UK Financial Ombudsman Service. They will review your complaint and liaise directly with you.
- For all other matters you will be advised of what other avenues may be available to you.

How long will the Stage 2 process take?

Your complaint will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of Lloyd's review of your complaint at least every 10 business days.

The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your complaint within 15 business days of receipt, provided Lloyd's have received all necessary information and have completed any investigation required.

External Dispute Resolution

If your complaint is not resolved in a manner satisfactory to you or Lloyd's do not resolve your complaint within 45 calendar days of receiving it at Stage 1, you may refer the matter to AFCA as follows:

AFCA can be contacted by:

Post: GPO Box 3, Melbourne VIC 3001

Phone: 1800 931 678

Email: info@afca.org.au

AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between you and your insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred to AFCA within 2 years of the date of our final decision. Determinations made by AFCA are binding upon us.

Customers not eligible for referral AFCA, may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

How much will this procedure cost you?

This service is free of charge to policyholders.