

**Mortgage and Finance Brokers
Professional Indemnity
Insurance Policy**

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IMPORTANT INFORMATION

This Policy

This **Policy** is an important document. The **Policy** wording and **Schedule** together set out the cover provided, the amount insured and the terms and conditions of **Your** insurance. Please read it carefully and keep it in a safe place.

Your Insurance Broker has arranged this **Policy** for **You**. If **You** have any questions about **Your** cover, or **You** wish to contact **ProRisk**, please contact **Your** Insurance Broker for assistance.

Prorisk

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, has the authority to bind this **Policy** on the **Underwriters**.

Claims Made Policy (Facts Prior to Commencement of Policy)

This **Policy** is issued by **ProRisk** on a **Claims** made and notified basis. This means that the **Policy** only covers **Claims** first made against **You** during the **Period of Insurance** and notified to **ProRisk** in writing during the **Period of Insurance**. A claims made policy does not provide cover for any **Claims** made against **You** during the **Period of Insurance** if at any time prior to the commencement of the **Period of Insurance** **You** were aware of facts which might give rise to those **Claims** being made against **You**.

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that where the insured gives notice in writing to the insurer during the **Period of Insurance** of facts that might give rise to a **Claim** against the insured, the insurer cannot refuse to pay a **Claim** which arises out of those facts, by reason only that the **Claim** is made after the **Period of Insurance** has expired.

This means that if during the **Period of Insurance**, **You** became aware of any facts that might give rise to a **Claim** it is in your interest to inform **Us** of those facts during the **Period of Insurance**. This will serve to protect **Your** rights to make a later **Claim** that has arisen from those notified facts.

Insurer May Not Refuse to Pay a Claim in Certain Circumstances

Section 54 of the *Insurance Contracts Act 1984* (Cth) provides that **We** cannot refuse to pay a claim in certain circumstances:

- (a) by reason only of an act (or failure to act) of **You** or another person, if that act (or failure to act), which occurred after the **Policy** was entered into,

did not cause any part of the **Loss** giving rise to the **Claim**. For example, if you have failed to satisfy a technical requirement of the **Policy** but can prove that this technical breach could not have reasonably caused or contributed to the **Loss** (that is the subject of your **Claim**), we cannot refuse the **Claim**; or

- (b) where the act was necessary to protect a person's safety, to preserve property or if it was not reasonably possible for the person not to do the act.

We can reduce **Our** liability for the **Claim** by the amount that fairly represents the extent to which **We** were prejudiced as a result of **Your** actions or **Your** failure to act.

Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* (Cth) provides that before **You** enter into a contract of general insurance with an insurer, **You** have a duty to disclose to the insurer every matter that **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, upon what terms. **You** have the same duty to disclose those matters to the insurer before **You** renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of a matter:

- that diminishes the risk to be undertaken by **Us**;
- that is of common knowledge;
- that **We** know, or in the ordinary course of business, ought to know;
- where **We** waive **Your** duty of disclosure.

Non-Disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a **Claim** or **We** may cancel the contract. If **Your** non-disclosure is fraudulent, **We** may also have the option of avoiding the contract from its beginning.

Retroactive Liability

The **Policy** is limited by a **Retroactive Date**. The **Policy** does not cover any civil liability arising from **Your** conduct of the **Professional Business** prior to the **Retroactive Date**.

Alteration to Risk and Deregistration

The **Policy** requires **You** to notify **Us** within thirty days of any material change in the nature of the **Professional Business**, or any act of insolvency or bankruptcy of the **Insured**. The **Policy** requires **You** to give immediate notice

of the cancellation, suspension, termination or imposition of conditions in respect of the **Insured's** statutory registration. **Claims** arising from conduct which occurs subsequent to the cancellation, suspension or termination of the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **Your** profession are excluded from indemnity under the **Policy**.

Limited Liability For Costs

The **Policy** provides that if a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for costs and expenses will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

Waiver of Rights of Subrogation

You must not, without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **You** may have in respect of any **Claim** covered under this **Policy**. **Our** consent will not be unreasonably withheld. Further, **You** must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **Our** right to refuse to pay a **Claim**.

Privacy Collection Statement

ProRisk is bound by the obligations of the Privacy Act 1988 (as amended) regarding the collection, use, disclosure and handling of personal information.

We collect personal information about **You** and about other individuals to enable **Us** to provide **You** with relevant products and services, to assess **Your** application for insurance and, if a contract is entered, to enable **Us** to provide, administer, and manage the **Policy**, and to investigate and handle any claims under the **Policy**. **We** may disclose personal information **We** collect to third parties (who may be located in the United Kingdom and other countries outside Australia). These include the insurer, lawyers, claims adjusters, and others appointed by **ProRisk** to assist **Us** in providing relevant products and services. **We** may also disclose **Your** information to people listed as co-insured on the **Policy** and to **Your** agents. By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures.

If **You** do not provide all or part of the information required, **We** may not be able to provide **You** with **Our** products and services, consider **Your** application for insurance, administer the **Policy**, assess or handle claims under the

Policy. **Your** Duty of Disclosure may require **You** to provide personal information to **Us**.

When **You** provide **Us** with personal information about other individuals, **We** rely upon **You** to have made them aware of that disclosure, and to ensure that they are aware of the matters set out in this **ProRisk** Privacy Statement and **ProRisk's** Privacy Policy and have consented to the disclosure.

Further information about **ProRisk's** collection, use, disclosure and handling of personal information is set out in its Privacy Policy, available on its website at www.prorisk.com.au. To obtain a hard copy of our Privacy Policy or to request access to or correction of or to update personal information, contact the Privacy Officer at **ProRisk** by email: enquiries@prorisk.com.au or by mail at the address shown on the **Policy**.

General Insurance Code of Practice

ProRisk and **Underwriters** 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 can be obtained from www.codeofpractice.com.au.

This **Policy** and the **Schedule** are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any **Claims** adjusted outside Australia.

Financial Hardship

We will review any Financial Hardship application in accordance with the General Insurance Code of Practice and any applicable guidelines.

Complaints Handling

There is an established process for dealing with complaints and disputes which is outlined in this Policy Wording.

Stage 1

Any enquiry or complaint relating to this insurance should be referred to **ProRisk** in the first instance by email, telephone or in writing at the address outlined in this policy wording.

We have a complaints handling and internal dispute resolution process to assist **You**, and **We** will respond to complaints within 15 business days.

Stage 2

If this does not resolve the matter or **You** are not satisfied with the way that the complaint was dealt with, **You** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager
Swiss Re International SE Australia Branch

Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints_anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority
 GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

Service of Suit

In the event of a dispute arising under this policy, **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.

Any summons notice or process to be served upon **Underwriters** may be served upon:

Professional Risk Underwriting Pty Ltd
Level 2, 115 Bridge Road
Richmond, VIC, 3121

who has authority to accept service and to enter an appearance on behalf of **Underwriters**, and who is directed at the request of the Insured to give a written undertaking to the Insured that it will enter an appearance on behalf of **Underwriters**.

If a suit is instituted against **Underwriters**, **Underwriters** will abide by the final decision of any such court or any competent appellate court.

Definitions

Apart from in the various headings, words appearing in bold type in the **Policy** have specific meanings attached to them, such as "**You**" and "**Us**". When reading the **Policy** please make sure that **You** refer to the various definitions to ensure that **You** understand what is being said.

MORTGAGE AND FINANCE BROKERS PROFESSIONAL INDEMNITY INSURANCE POLICY

In consideration of the payment of the premium and in reliance upon all statements made and information provided to **Us**, including statements made in the **Proposal** and materials accompanying it, which it is agreed shall form the basis of this insurance, and subject to all the terms and conditions of this **Policy**, **We** agree as follows:

1. INSURING CLAUSE

1.1. Cover

We shall pay to or on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability in respect of the conduct of the **Professional Services**, provided that such **Claim** is first made against the **Insured** during the **Period of Insurance**.

2. AUTOMATIC EXTENSIONS

Each of the following Extensions automatically applies unless otherwise stated in the endorsements. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions and conditions of this **Policy** unless otherwise stated in this Clause 2. None of these Extensions increase the Limits of Liability specified in the **Schedule**.

2.1. Automatic Reinstatement

In the event that the aggregate Limit of Indemnity is exhausted by a **Claim** or an **Investigation**, the Limit of Indemnity shall be automatically reinstated subject to the following:

- (a) the number of automatic reinstatements possible under this Extension 2.1 is limited to two only; and
- (b) such reinstatement shall be limited in total to an amount equal to the aggregate Limit of Indemnity shown in the **Schedule**; and
- (c) such reinstatement shall only apply after the total Limit of Indemnity available under the applicable policies in excess of this insurance are exhausted by a **Claim** or an **Investigation**; and
- (d) notwithstanding such reinstatement, this **Policy** shall be subject to the Limit of Indemnity set out in the **Schedule** and any sub-limit of indemnity including the sub limit for **Legal Representation Expenses** in Extension 2.10; and

- (e) **our** maximum aggregate Limit of Indemnity under this **Policy** for all **Loss** arising from all **Claims** and all **Legal Representation Expenses** arising from all **Investigations**, whether against one or any number of **Insureds**, shall never exceed three times the amount in the **Schedule**; and
- (f) the limit so reinstated shall not apply in relation to any **Claim** or **Investigation** which is related or attributable to the one source or originating or underlying cause as any matter which has contributed to the exhaustion.

2.2. Consultants, Contractors, Subcontractors and Agents Liability

We agree to extend cover to any **Loss** arising from a **Claim** and all **Legal Representation Expenses** arising from all **Investigations** against any consultant, contractor, subcontractor or agent of the **Insured** for which the **Insured** is legally liable by reason of the conduct of the **Professional Services**. Further, this Extension 2.2 provides coverage to any consultant, contractor, subcontractor or agent of the **Insured** but only whilst such consultant, contractor, subcontractor or agent of the **Insured** is operating under the direction of the insured, solely while working for and/or on behalf of the **Insured** and operating under the same credit license.

2.3. Defamation

We agree to extend cover to any **Loss** arising from a **Claim** for civil liability for unintentional defamation by the **Insured** in the conduct of the **Professional Services**.

We shall not be liable to make any payment under this **Policy** for intentional defamation.

2.4. Intellectual Property Infringement

Notwithstanding Exclusion 3.21 (Intellectual Property), **We** agree to extend cover to any **Loss** arising from a **Claim** for civil liability for unintentional infringement by the **Insured** of any **Intellectual Property** right, except any actual or alleged patent right, in the conduct of the **Professional Services**.

We shall not be liable to make any payment under this **Policy** for intentional infringement of any **Intellectual Property** right.

2.5. Joint Venture Liability

We agree to extend cover to any **Loss** arising from a **Claim** and all **Legal Representation Expenses** arising from all **Investigations** against the **Insured** for civil liability arising from the **Insured's** participation in any **Joint Venture** in the conduct of the **Professional Services**.

Any indemnity afforded under this Extension 2.5 shall be limited to the **Insured's** proportion of any liability incurred by such **Joint Venture**.

This Extension 2.5 neither affords coverage to any person or entity with whom or which the **Insured** is in a **Joint Venture** nor makes any such person or entity an **Insured**.

2.6. Loss of Documents

We agree to extend cover to any **Loss** arising from a **Claim** and all **Legal Representation Expenses** arising from all **Investigations** for loss of or damage to or destruction of those **Documents** for which the **Insured** is legally responsible in the conduct of the **Professional Services** provided that such loss, damage or destruction is first discovered and reported to **Us** during the **Period of Insurance** and, in the case of loss of **Documents**, which cannot be found after diligent search.

The cover provided by this extension will not apply to pay that part of any **Loss** arising from a **Claim** which:

- (a) exceeds the reasonable costs, charges and expenses in replacing or restoring the **Documents**; and/or
- (b) comprises costs, charges or expenses directly or indirectly relating to any **Documents** which have been destroyed, damaged or lost as a result of wear, tear or other gradually operating causes or **Computer Virus**.

Our total liability under this Extension 2.6 shall not exceed the sub-limit specified in the **Schedule**.

The cover provided by this Extension 2.6 applies regardless of the **Retroactive Date**.

Notwithstanding Condition 5.2 of this **Policy** the **Excess** does not apply to this Extension 2.6.

2.7. Newly Acquired or Created Subsidiaries

We agree to extend cover to any **Subsidiary** of the **Firm** which is acquired or created during the **Period of Insurance**, provided that such **Subsidiary**:

- (a) increases the **Firm's** total gross fees or revenue by no greater than 20% based on the fees and/or revenue as disclosed by the **Firm** as its last 12 months fees and/or revenue in the most recent **Proposal**; and
- (b) conducts and / or provides the same **Business**; and
- (c) is not domiciled and/or incorporated in the United States of America or Dominion of Canada.

Any **Subsidiary** acquired or created during the **Period of Insurance** and which falls within 2.7(b) but which does not fall within the requirements of 2.7(a) and/or 2.7(c) above shall automatically be covered under this **Policy** for a period of 30 days from the date of acquisition or creation of the **Subsidiary** but not beyond that. We may then, with reasonable consideration, agree to extend cover in return for the payment of additional premium and any amendments to the terms of this **Policy**, cover under this **Policy** may be extended to a **Subsidiary** which falls within 2.7(b) but which does not fall within the requirements of 2.7(a) and/or 2.7(c) above beyond 30 days from the date of acquisition or creation.

This Extension 2.7 shall not provide coverage in respect of any **Claim** or **Investigation** against the **Subsidiary** arising from the conduct of any **Professional Services** provided or required to be provided before the **Firm** acquires or creates such **Subsidiary**.

2.8. Run Off Cover for Insured Entity

In the event that a **Firm** is merged into or acquired by another entity or otherwise ceases to exist or operate or is subject to an **Insolvency Event** during the **Period of Insurance**, the coverage provided under the **Policy** for such **Firm** shall continue until the end of the **Period of Insurance**, provided that such coverage shall only apply in respect of a **Claim** that arises from the conduct of its **Professional Services** prior to the date the **Firm** ceased to exist or operate, was merged into or acquired by another entity or became the subject of an **Insolvency Event**.

2.9. Continuous Cover

Notwithstanding Exclusion 3.15 (Prior Matters) coverage is provided for **Loss** arising from any **Circumstance** which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **Policy** is a renewal or replacement of, provided always that:

- (a) the **Insured** has maintained without interruption, professional indemnity insurance with an insurer from the date the **Circumstance** was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth); and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **Us** in respect of the **Claim** or **Circumstance**; and
- (c) the cover provided by this Extension 2.9 will be in accordance with all the terms and conditions (including for the avoidance of doubt), the Limit of Indemnity and **Excess** amounts, or any sub-limit (of the policy under which the **Claim** or **Circumstance** was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **Claim** or **Circumstance** than the provisions of this **Policy**; and
- (d) the **insured** has notified such a **claim** or **Circumstance** under the prior professional indemnity policy or similar insurance and is unable to obtain cover as it has been notified after such policy expired.

2.10. Legal Representation at Investigations

We agree to pay on behalf of any **Insured** its **Legal Representation Expenses** at any **Investigation** first commenced against the **Insured** during the **Period of Insurance**.

Notwithstanding Condition 5.2 (Excess) of this **Policy** the **Excess** does not apply to this Extension 2.10.

2.11. Emergency Defence Costs and Legal Representation Expenses

If it is not possible for the **Insured** to obtain **Our** written consent prior to the incurring of **Defence Costs** or **Legal Representation Expenses**, **We** will give retrospective consent as long as **Our** consent is sought within 30 days of such **Defence Costs** or **Legal Representation Expenses** being incurred. **Our** consent will not be unreasonably withheld.

Our liability under this Extension 2.11 in respect of **Defence Costs** incurred for each **Claim** and **Legal Representation Expenses** incurred for each **Investigation** will not exceed 10% of the Limit of Indemnity specified in the **Schedule** or 10% of the sub-

limit of indemnity specified in the **Schedule** respectively.

For the avoidance of doubt, **Our** total liability under this Extension 2.11 in respect of all **Defence Costs** incurred for all **Claims** and all **Legal Representation Expenses** incurred for all **Investigations** will not exceed the Limit of Indemnity specified in the **Schedule** or the sub-limit of indemnity specified in the **Schedule** respectively.

2.12. Advancement of Defence Costs and Legal Representation Expenses

We will advance any covered reasonably necessary **Defence Costs** and **Legal Representation Expenses** as provided under this **Policy** within 30 days of receipt and approval of an invoice for such **Defence Costs** or **Legal Representation Expenses**.

2.13. Discovery Period

If **We** or the **Insured** do not renew this **Policy**, **We** will extend the cover under this **Policy** for a discovery period of 45 days at nil additional premium which shall run from the date this **Policy** is not renewed. This Extension does not apply if there is a fraudulent claim under the **Policy** by or on behalf of the **Insured**.

The discovery period shall only apply to a **Claim** first made or an **Investigation** first commenced against the **Insured** before or during such 45-day discovery period, but only in respect of conduct of the **Professional Services** prior to the non-renewal of this **Policy**.

2.14. Fraud and Dishonesty

Notwithstanding Exclusion 3.7 (a) and 3.7 (b) (Fraud, Dishonesty & Intentional Conduct) of this **Policy**, **We** agree to extend cover to any **Loss** arising from a **Claim** against the **Insured** arising from a dishonest or fraudulent act, failure to act or any malicious, criminal or intentional breach of law of any **Principal**, **Employee**, contractor or subcontractor of the **Firm** in the conduct of the **Professional Services**, provided that coverage under this Extension 2.14 shall not be provided to any person committing, participating in or condoning such dishonest or fraudulent act or failure to act or malicious, criminal or intentional breach of law.

2.15. Competition and Consumer Act 2010

We shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability under the *Competition and Consumer Act 2010* (Cth), and any similar law of

any State or Territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services, in the conduct of the **Professional Services** provided that such **Claim**:

- (a) arises from an act, error or failure to act of the **Insured** occurring on or after the **Retroactive Date**; and
- (b) does not involve any liability under the penal or criminal provisions of those Acts.

2.16. Civil Compensatory Orders

We agree to extend **Loss** arising from a **Claim**, to include any civil compensatory order (not being an award of damages) that results from a contravention of any penalty provision of a statute or legislative provision provided that:

- (a) The **Claim** is in respect of the conduct of the **Professional Services**, and that such **Claim** is first made against the **Insured** during the **Period of Insurance**; and
- (b) the cover provided by this Extension 2.16 will not apply to any civil compensatory order directly or indirectly caused by, arising out of or in any way connected with any legislative contravention which is based upon wilful misconduct; and
- (c) **Our** total liability under this Extension 2.16 shall be \$250,000 in the aggregate.

2.17. 84 Months Run-off

In the event that the **Insured** ceases to conduct the **Professional Services** during the **Period of Insurance** the coverage provided under this **Policy** for such **Insured** shall be extended for eighty four (84) months from the date that the **Insured** ceases to conduct the **Professional Services**, provided that such coverage shall only apply in respect of a **Claim** that:

- (a) is first made against an **Insured** during the eighty four (84) month extension referred to above and which is notified to **Us** during the eighty four (84) month extension referred to above; and
- (b) arises from an act, error or failure to act by an **Insured** occurring between:

- (i) the **Retroactive Date**; and

- (ii) the date the **Insured** ceased to perform the **Professional Services**.

This Extension 2.17 will not apply if such **Insured** has:

- (a) failed to provide written notice with details as to the fact that the **Insured** has ceased to conduct the **Professional Services** and the date of such cessation to **Us**;
- (b) cancelled the **Policy** during the **Period of Insurance**;
- (c) placed its professional indemnity insurance with another insurer;
- (c) at any time prior to the commencement of the 84 month extension and during the **Policy Period**, notified **Us** of any **Claim** or **Circumstances**; or
- (d) an outstanding disciplinary matter or at any time within the past 7 years been the subject of disciplinary penalty by any regulatory body or membership association.

2.18. Australian Financial Complaints Authority

We will pay on behalf of the **Insured** any **Loss** in respect of the conduct of the **Professional Services** arising from any complaint to the Australian Financial Complaints Authority, first made against the **Insured** during the **Period of Insurance** and notified to **Us** during the **Period of Insurance**.

2.19. Aggregator's Vicarious Cover Extension

By way of endorsement to the **Policy**, the parties agree as follows (subject otherwise to all other terms, conditions, limits of liability and exclusions of the **Policy**):

- (a) In the event that an indemnity is provided to the **Insured** under this **Policy** in respect of a covered **Claim**, **We** also agree, subject always to all other terms, exclusions and conditions of this **Policy**, to indemnify the insured's Aggregator solely in respect of and to the extent of the Aggregator's vicarious liability for any **Loss** arising from such **Claim** but only where the breach of professional duty giving rise to the civil liability of the **Insured** has arisen while such **Insured** is acting within the scope of the Aggregator's contractor agreement and/or franchise agreement.
- (b) This extension does not make the insured's Aggregator an **Insured**.

- (c) Nothing in this Extension increase the Limits of Liability specified in the **Schedule**.

In all other respects the **Policy** remains unaltered.

2.20. Free Legal Consultation

The following is inserted into the **Policy**:

During the **Period of Insurance**, **You** are entitled to up to 30 minutes of free legal advice from **Our** appointed legal firm on any matter relating to **Your Professional Services** subject always to the following:

- (a) The **Schedule** must be presented to the appointed legal firm when requesting legal advice under this Endorsement. If the **Schedule** is not presented then no legal advice can be sought under this section;
- (b) Entitlement to legal advice is limited to a maximum of 30 minutes per year and any unused hours or part thereof cannot be aggregated from one **Period of Insurance** to another;
- (c) **We** reserve the right to change the appointed legal firm at any time. Changes to the appointed firms will be notified to **You** on request;
- (d) **You** may not seek legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Us**;
- (e) If cover under this **Policy** is sought by **You** in respect of any matter on which **You** have sought legal advice under this Extension from the appointed legal firm, **We** can engage the appointed legal firm to represent **You** and they can disclose to **Us** any information obtained in the course of tendering advice to **You**. To the extent necessary, **You** waive all claims to legal professional privilege with **Us**;
- (f) Contacting the appointed legal firm for free legal advice does not constitute a **Claim** notification under Clause 6.4 of the **Policy**. **You** must still comply with the **Policy** terms and conditions in relation to a **Claim** and give immediate written notice or written notice as soon as practically possible to **Us** within the **Period of Insurance**.

In all other respects the **Policy** remains unaltered.

2.21. Compensation for Court Attendance

We will pay **You** reasonable compensation if legal advisers, acting on **Your** behalf with **Our** consent, require any **Principal** or **Employee** to attend court as

a witness in connection with a **Claim** covered under this **Policy** first made and notified to **Us** during the **Period of Insurance**, but only in circumstances where **You** pay the **Principal** or **Employee** for their attendance, in addition to their usual salary.

The cover provided for this endorsement will be up to \$250 per person per day and up to \$10,000 per claim.

In all other respects the **Policy** remains unaltered.

2.22. Fidelity Extension Sub-Limit \$50,000

We will cover **You** for any loss of money, negotiable instruments, stamps, bearer bonds or coupons, bank or currency notes belonging to **You** or for which **You** are legally liable where such loss is sustained in consequence of any **Fraudulent Act**, provided that:

- (a) such loss is discovered by **You** during the **Period of Insurance** and is notified in writing to **Us** within the **Period of Insurance** and within twenty-eight days of the date of discovery;
- (b) there is no cover for any further losses suffered by **You** after **You** have become aware of any loss or any **Fraudulent Act**, or
- (c) the date upon which a reasonable person would have had cause for suspicion of any loss or any **Fraudulent Act**;
- (d) **You** shall, at **Your** own cost and expense, provide such documentation and information as is, reasonably necessary to substantiate the existence of and the amount of any such loss;
- (e) a series of related, repeated or continuous **Fraudulent Acts** of any one **Employee** or group of **Employees** acting in collusion shall be treated as giving rise to a single loss for the purpose of applying the **Excess** for this Extension.
- (f) this Extension shall not increase the Limit of Indemnity;
- (g) cover under this Extension is subject to a sub-limit of \$50,000 in the aggregate for the **Period of Insurance**.
- (h) For the purpose of this Endorsement the term **Fraudulent Act(s)** means any dishonest, wrongful, deceptive, criminal, malicious or unauthorised act or failure to act committed by an **Employee**.

In all other respects the **Policy** remains unaltered.

3. EXCLUSIONS

We shall not be liable for any **Loss** arising from any **Claim**, **Legal Representation Expenses** arising from any **Investigation** or any other payment under this **Policy**:

3.1. Assumed Liabilities & Duties

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged liability assumed under any contract, agreement or understanding except to the extent that such liability would have attached to the **Insured** in the absence of such contract, agreement or understanding.

3.2. Failure or Counterparty

directly or indirectly caused by, arising out of or in any way connected with the insolvency, bankruptcy, liquidation, receivership or administration of, or the failure to pay or suspension of payment by, any bank or banking firm, insurance company, investment company, investment banker or any broker or dealer in securities or commodities, or other persons or organisations of a similar nature.

3.3. Failure to Disclose Commissions

directly or indirectly caused by, arising out of or in any way connected with any failure by the **Insured** or any representative of the **Insured** to disclose to clients any commissions, fees and /or other benefits received in connection with making a recommendation.

3.4. Failure to Hold or Maintain a Licence

directly or indirectly caused by, arising out of or in any way connected with any failure by any **Insured** to hold or to continue to hold any authorisation, licence or approval required by law.

3.5. Financial Failure & Trading Debts

directly or indirectly caused by, arising out of or in any way connected with any debt of an **Insured** or any guarantee or other undertaking or obligation given by an **Insured** for a debt.

3.6. Financial Planning Advice

directly or indirectly caused by, arising out of or in any way connected with the rendering of services in connection with any financial planning business and the provision of advice in connection with such services or financial products.

3.7. Fraud, Dishonesty & International Conduct

directly or indirectly caused by, arising out of or in any way connected with any **Insured** committing or condoning or allegedly committing or condoning any:

- (a) dishonest or fraudulent act or failure to act; or
- (b) any malicious, criminal or intentional breach of the law; or
- (c) cartel or other anti-competitive conduct, or gaining any profit or advantage to which the **Insured** is not legally entitled.

3.8. Insurance Intermediaries

directly or indirectly caused by, arising out of or in any way connected with the rendering of professional services of or in connection with any insurance broker or insurance agency business including but not limited to the negotiation of insurance contracts, the collection or remittance of premiums, the rendering of loss control services, or the provision of advice by the **Insured** in connection with such services.

This exclusion does not apply with respect to:

- (a) the provision of mortgage insurance through an insurance agency business; or
- (b) the identification and referring by the **Insured** to third party insurance provider

3.9. Loss of Money

directly or indirectly caused by, arising out of or in any way connected with **Loss of Money**.

3.10. Managerial Liability

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged breach by an **Insured** of a duty owed in the capacity of a director, secretary, trustee or officer.

3.11. Margin Lending Advice

directly or indirectly caused by, arising out of or in any way connected with any representation or advice provided by the **Insured** or any other person for whose acts the **Insured** is legally responsible with regard to margin lending and/or margin lending products.

3.12. Owners or Occupiers Liability

directly or indirectly caused by, arising out of or in any way connected with:

- (a) the ownership, management, control or occupation of real property by or on behalf of the **Insured**; or
- (b) the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.

3.13. Obligations to Employees

directly or indirectly caused by, arising out of or in any way connected with any breach of any obligation owed to any **Employee** arising out of or in the course of that **Employee's** employment by the **Firm**.

3.14. Pollution

directly or indirectly caused by, arising out of or in any way connected with **Pollution** or **Pollutants** in whatever form or quantity.

3.15. Prior Matters

directly or indirectly caused by, arising out of or in any way connected with any:

- (a) **Claim** first made or **Investigation** first commenced before the **Period of Insurance**; or
- (b) matter notified in whole or in part to **Insurers** or any other insurer before the **Period of Insurance**; or
- (c) **Circumstance** which was known to or ought reasonably to have been known to the **Insured** prior to the commencement of the **Period of Insurance**.

3.16. Products Liability

directly or indirectly caused by, arising out of or in any way connected with any goods manufactured, distributed, supplied, installed, treated, assembled or processed by or on behalf of any **Insured**.

3.17. Property Valuation

directly or indirectly caused by, arising out of or in any way connected with any property valuation conducted by, arranged by or obtained by the **Insured** or any other person for whose acts the **Insured** is legally responsible.

3.18. Real Estate Agents

directly or indirectly caused by, arising out of or in any way connected with the rendering or failure to render professional services in connection with any real estate agency or auctioneer business conducted by the **Insured**, including but not limited to the purchase, sale, rental, leasing or valuation of real property or the provision of advice in connection with such services.

3.19. Related Persons & Entities

brought or maintained by or on behalf of:

- (a) any **Insured** or parent company of any **Insured**; or
- (b) any entity within the same group of companies as the **Insured**; or
- (c) any person or entity who, at the time of the act, error or failure to act giving rise to the **Claim** is a **Relative** of any **Insured** or controlled by a **Relative** of any **Insured**.

3.20. War & Terrorism

directly or indirectly caused by, arising out of or in any way connected with or in consequence of:

- (a) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, marshal law, riot, rebellion, revolution, insurrection, military or usurped power; or
- (b) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

3.21. Intellectual Property

directly or indirectly caused by, arising out of or in any way connected with the actual or alleged infringement of any **Intellectual Property** right.

4. CLAIMS CONDITIONS

4.1. Notification of Claims and Investigations

The **Insured** must give written notice of any **Claim** or **Investigation** to **Us** as soon as practicable, but always no later than 90 days after the expiry of the **Period of Insurance**, or 30 days after the expiration of the Discovery Period provided under Extension 2.13 (Discovery Period), if applicable, whichever is the later, to:

Professional Risk Underwriting Pty Ltd
Level 2, 115 Bridge Road
Richmond VIC 3121

Such written notice will include the following so far as is reasonably practicable and so far as the relevant policy holder is aware:

- (a) a specific description of the demand or assertion comprising the **Claim** or **Investigation**, including the date when and manner in which the **Insured** first became aware of the matter; and
- (b) the details of any parties involved; and
- (c) a copy of any written demand or assertion and any document relating to the commencement of proceedings against the **Insured** once available.

4.2. Conduct of Proceedings

- 4.2.1 It is the duty of the **Insured**, not **Insurers**, to defend any **Claim** made against, or arrange representation at an **Investigation** involving, an **Insured**. **We**, however, are entitled to take over and conduct (in the name of any **Insured**) the defence of any **Claim** or **Investigation** in respect of which **We** are or may be liable to indemnify such **Insured**.
- 4.2.2 An **Insured** must not incur any **Defence Costs** or **Legal Representation Expenses** without **Our** prior written consent, which shall not be unreasonably withheld. Save as provided for in Extension 2.11 (Emergency Defence Costs and Legal Representation Expenses) of this **Policy**, **We** are not liable to indemnify any **Insured** for any **Defence Costs** or **Legal Representation Expenses** unless **We** provide **Our** prior written consent to the incurring of such **Defence Costs** or **Legal Representation Expenses**. Such consent will not be unreasonably withheld.
- 4.2.3 An **Insured** must not settle or make any admission, offer, payment or otherwise assume any contractual or other obligation in relation to any **Claim** or **Investigation** in respect of which **We** are, or may be, liable to indemnify any **Insured**, without **Our** prior

written consent which must not be unreasonably withheld. **We** are not liable to indemnify any **Insured** for any settlement, admission, offer, payment or assumed obligation unless **We** provide their prior written consent which must not be unreasonably withheld. This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **Our** right to refuse to pay a **Claim**.

- 4.2.4 **We** shall not agree to any settlement in connection with any **Claim** unless **We** have reasonably engaged with the **Insured** and considered the **Insured's** interest in relation to defending the **Claim**.

4.3. Multiple Claims and Related Conduct

For the purpose of determining cover under this **Policy**, all **Claims** and/or **Investigations** arising or resulting from or connected to:

- (c) one act, error or failure to act; or
- (d) acts, errors or failures to act which are the same or are attributable to the one source or originating or underlying cause

shall be regarded as one **Claim** and/or **Investigation**.

4.4. Mitigation and Co-operation

- 4.4.1 The **Insured** must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any **Loss** under this **Policy**.
- 4.4.2 Each **Insured** must, at its own expense and on an ongoing basis, give **Us** and any investigators or legal representatives appointed by **Us** all information they reasonably require, and reasonable co-operation and assistance in the conduct of any investigation (including investigations for the purpose of enabling **Us** to determine its liability to provide an indemnity under this **Policy**).

4.5. Disclosure of Information

Legal representatives appointed by **Us** to act on an **Insured's** behalf shall be entitled to disclose to **Us** any information obtained while so acting. **We** will keep all such information confidential.

4.6. Disputes as to Defence & Settlement of Claims

- 4.6.1 If a dispute arises between **Us** and an **Insured** as to whether a **Claim** should be contested, neither **Us** nor the **Insured** will require the other to contest the **Claim** unless a Senior Counsel (to be mutually agreed) recommends that the **Claim** should be contested. In the event of a dispute regarding the identity of the

Senior Counsel the person shall be chosen by the President of the Law Society of NSW. **We** will brief the Senior Counsel to advise, as an expert, on whether or not the **Claim** should be contested and if not, on the amount for which the **Claim** should be settled. In providing such advice and in making any recommendation as to settlement, the Senior Counsel may take into account both legal and commercial considerations. The Senior Counsel must have regard to the damages and costs that are likely to be recovered, the **Defence Costs** that will be incurred in contesting the **Claim** and the prospects of the **Claim** being successfully defended. The costs of obtaining this recommendation will be paid by **Us**.

- 4.6.2 If the Senior Counsel recommends that settlement of the **Claim** should be attempted, then settlement of the **Claim** must be attempted as recommended.
- 4.6.3 Where settlement is attempted in accordance with the Senior Counsel's recommendation but is unsuccessful, **We** will continue to indemnify the **Insured** subject to the terms and conditions of this **Policy**.
- 4.6.4 If a settlement recommended by the Senior Counsel is acceptable to the claimant, but the **Insured** refuses to consent to such settlement, **Our** liability will be limited to the amount for which the **Claim** could have been settled, plus the **Defence Costs** or **Legal Representation Expenses** incurred up to the date the refusal to consent was made.

4.7. Subrogation

- 4.7.1 Should any payment be made under this **Policy**, **We** will retain the right to be subrogated to all rights of recovery in respect of such payments. In addition, all reasonable assistance, including the provision of documentation, will be rendered to **Us** in the prosecution of such rights by the **Insured**. Any recovery received will be applied first against any Loss insofar as it exceeds the Limit of Indemnity, then against any payment made by **Us**, then finally against the **Excess**.

5. GENERAL CONDITIONS

5.1. Limit of Indemnity

- 5.1.1 The aggregate limit of **Our** liability for all **Loss** arising from any one **Claim** is the sum specified in the **Schedule**.
- 5.1.2 Any sub-limit specified in this **Policy** shall be **Our** maximum aggregate liability under such sub-limit irrespective of the number of **Claims** or **Investigations**, the amount claimed or the number of **Insureds** who make a claim under this **Policy**. Any sub-limit shall be part of and not in addition to the sum specified in the **Schedule**
- 5.1.3 **Our** maximum aggregate liability under this **Policy** for all **Loss** arising from all **Claims** and all **Legal Representation Expenses** arising from all **Investigations**, irrespective of the number of **Claims** or **Investigations** under this **Policy**, the amount claimed or the number of **Insureds** who make claims, is the sum specified in the **Schedule**.

5.2. Excess

The **Insured** shall pay the first amount of each and every **Loss** arising from any one **Claim**, up to the amount specified in the **Schedule** as the **Excess**.

5.3. Territorial Limits

- 5.3.1 To the extent permitted by law, coverage extends to anywhere in the world except for any **Loss** and/or **Legal Representation Expenses** resulting from the conduct of **Professional Services** which occurred within the territorial limits of the United States of America or the Dominion of Canada and their territories or protectorates.
- 5.3.2 No **Insurer** shall be deemed to provide cover and no **Insurer** shall be liable 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 that **Insurer** 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, Australia or United States of America.

5.4. Jurisdictional Limits

Subject to the Territorial Limits clause and to the extent permitted by law, coverage extends to **Claims** or **Investigations** anywhere in the world, except for **Claims** or **Investigations**:

- (a) involving the application of the law of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) brought in a court of law in the United States of America or the Dominion of Canada or their territories or protectorates; or
- (c) arising out of the enforcement of any judgement, order or award made in any court of law in the United States of America or the Dominion of Canada or their territories or protectorates.

5.5. Policy Construction and Interpretation

In this **Policy**, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa; and
- (b) headings are merely descriptive and not to aid interpretation; and
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (d) references to an amount of money are references to that amount in Australian dollars unless otherwise provided; and
- (a) bolded words used in this Policy have the meanings set out in Section 6 (Definitions and Interpretation).

5.6. Retroactive Date

If a **Retroactive Date** is specified, this **Policy** will not cover, and does not apply to, any **Claim** or **Investigation** where the **Professional Services** leading to such **Claim** or **Investigation** were or were alleged to have been provided or required to be provided, in whole or in part, before the **Retroactive Date**.

5.7. Authorisation

The first named **Firm** on the **Schedule** agrees to act on behalf of all **Insureds** with respect to:

- (a) the giving and receiving of all notices given under this **Policy** including as to cancellation; and
- (b) the payment of premiums and the receiving of any return premiums that may become due under this **Policy**; and
- (c) the negotiation, agreement to and acceptance of endorsements; and
- (e) the giving or receiving of any notice provided for in this **Policy**; and

- (f) the receipt of all amounts payable by **Us** under this **Policy**.

Each **Insured** agrees that the first named **Firm** shall act on its or their behalf.

5.8. Cancellation

- 5.8.1. The **Insureds** may cancel this **Policy** only by the first named **Firm** on the **Schedule** giving 30 days written notice to **Us**. If there are no matters notified to **Us** under this **Policy**, **We** will allow a refund of unearned premium calculated in accordance with its customary short-term rates.
- 5.8.2. **We** will only cancel this **Policy** by written notice given to the **Insured** and in accordance with the requirements of the Insurance Contracts Act (Cth) 1984. If there are no matters notified to **Us** under this **Policy**, **We** will allow a refund of unearned premium calculated in proportion to the unexpired time on risk but such refund will never be greater than 75% of the premium.

5.9. Governing Law

This **Policy** is governed by, and interpreted in accordance with, the laws of the Commonwealth of Australia and the State of New South Wales Disputes relating to interpretation of this **Policy** must be submitted to the exclusive jurisdiction of the Courts of New South Wales.

5.10. Other Insurance

- 5.10.1 If any **Loss** arising from a **Claim** or **Investigation** is insured under any other policy (whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise) entered into by or effected on behalf of the **Insured**, or under which the **Insured** is a beneficiary, whether prior or current, then to the extent permitted by the Insurance Contracts Act 1984 (Cth), this **Policy**, subject to its limitations, conditions, provisions and other terms, will only cover **Loss** to the extent that the amount of such **Loss** is in excess of the amount of such other insurance.
- 5.10.2 Clause 5.10.1 above does not apply to such other insurance that is written specifically as excess insurance over the Limit of Indemnity provided in this **Policy**.

5.11. Severability and Non Imputation

The **Proposal** shall be construed as a separate proposal by each natural person **Insured**. With respect to the statements and particulars in the **Proposal**, no fact pertaining to or information possessed by any natural person **Insured** shall be imputed to any other

natural person **Insured** to determine whether cover is available for such other natural person **Insured**.

If more than one natural person or **Firm** is insured under this **Policy**, then any non-disclosure or misrepresentation by one natural person or **Firm** shall not prejudice the rights of any other natural person or **Firm** entitled to indemnity under this **Policy**, provided that the other **Insured** is innocent of, and has no knowledge of the facts or matters not disclosed or such misrepresentation (or should not reasonably have had such prior knowledge).

5.12. Confidentiality

The **Insured** must not disclose the terms, the nature or the Limit of Indemnity or the premium payable under this **Policy**, to any third party, including disclosure in the **Firm's** annual report if applicable, except where:

- (a) **We** provide written consent; or
- (b) disclosure is required by law.

5.13. GST

Where **We** make payment under this **Policy**:

- (a) the amount of the payment will be reduced by the amount of any input tax credit to which the **Insured** is or may be entitled to claim; and
- (b) the **Insured** must inform **Us** of the extent of any entitlement to an input tax credit for the premium at or before the time a claim is made under this **Policy**.

If an **Insured** makes a claim under this **Policy**, it must inform the **Us** of its Australian Business Number if it has one.

The amount of the applicable **Excess** is calculated after deduction of the amount of any input tax credit that the **Insured** is or may be entitled to claim.

6. DEFINITIONS & INTERPRETATION

6.1. **Act of Terrorism** means:

- (a) an act, including but not limited to, the use of force, violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone, on behalf of, or in connection with any organisation(s) 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; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to anything in (a) above regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

6.2. **Business** means the activities of the **Firm** set out in the **Schedule**.

6.3. **Circumstance** means any fact, matter or circumstance which gives rise to a **Claim** or **Investigation** or has the potential to give rise to a **Claim** or **Investigation**.

6.4. **Claim** means:

- (a) the receipt by the **Insured** of any written demand for civil compensation or civil damages or non-monetary civil relief made against the **Insured**; or
- (b) any originating legal or arbitral process, cross claim, counterclaim or third party notice served upon the **Insured** which contains a demand made against the **Insured** for civil compensation or civil damages or non-monetary civil relief arising out of the conduct of (including a failure to perform) the **Professional Services**.

6.5. **Defence Costs** means reasonable legal and other professional fees, costs and expenses incurred by and with the prior written consent of **Us**, not to be unreasonably withheld or delayed, that are necessary to defend or appeal a covered **Claim**. Fees which the **Insured** is bound to pay to an external dispute resolution body, such as the Australian Financial Complaints Authority, in respect of any **Claim** are included within the meaning of Defence Costs.

6.6. **Documents** means documents of any nature except money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument, legally owned by a client of the **Insured**.

6.7. **Employee** means:

- (a) each person who was, is or becomes employed by the **Firm** in the ordinary course of the **Business** and who is paid by the **Firm** by way of salary or wages; or
- (b) a volunteer working without fee or reward in the ordinary course of the **Business**, provided that the performance of whose duties is subject to the direction and control of the **Firm**.

6.8. **Excess** means the amount specified in the **Schedule**.

6.9. **Firm** means the entity, partnership or company specified in the **Schedule** and any **Subsidiary**. Where two or more entities are specified, the **Firm** means each of them, unless the context otherwise requires.

6.10. **Insolvency Event** means:

- (a) The appointment of an administrator, special manager, provisional liquidator or liquidator to the **Firm**; or
- (b) Where (except for the purpose of a solvent reconstruction or amalgamation) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) the winding up, dissolution or administration of the **Firm**; or
 - (ii) the **Firm** entering into an arrangement, amalgamation, compromise, composition or reconstruction with or assignment for the benefit of its creditors or a class of creditors.

6.11. **Insured** means:

- (a) the **Firm**; and
- (b) each **Principal**, but only in respect of work performed in the capacity of a **Principal** of the **Firm**; and
- (c) each **Employee**, but only in respect of work performed in the capacity of an **Employee** of the **Firm**; and
- (d) the estate, heirs or legal representatives of each deceased or legally incapacitated **Principal** or **Employee** but only to the extent that such **Principal** or **Employee** would have been covered under this **Policy** in the absence of such death or legal incapacity, as the case may be, and only in respect of work performed by the **Principal** or **Employee** in their capacity as a **Principal** or **Employee** of the **Firm**; and

- (e) the lawful spouse or domestic partner of each **Principal** or **Employee** but only to the extent that such **Principal** or **Employee** would have been covered under this **Policy**, as the case may be, and only in respect of work performed by the **Principal** or **Employee** in their capacity as a **Principal** or **Employee** of the **Firm**.

6.12. Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade-marks, designs, patents, circuit layouts, plant varieties, company, business and domain names and inventions.

6.13. Investigation means a formal or official investigation, examination or inquiry before any duly constituted court or tribunal or other body having the power to compel the attendances of witnesses (including any hearing before any disciplinary body of any professional institution or association) against any **Insured** arising out of **Professional Services** other than any industry-wide investigation and/or routine supervision, inspection, compliance or similar review.

6.14. Joint Venture means any enterprise carried on in common by the **Firm** with a third party or parties (not being an **Insured** under this **Policy**).

6.15. Legal Representation Expenses means the reasonable legal costs or related professional fees incurred by or on behalf of an **Insured** (but not including any remuneration of any **Principal** or **Employee**) with the prior written consent of **Us**, whose consent is not to be unreasonably withheld or delayed, directly in connection with an **Insured** co-operating with or being represented at an **Investigation**.

6.16. Loss means all amounts which an **Insured** becomes legally obligated to pay in respect of a **Claim** (including but not limited to any damages, judgments entered or settlements reached) and **Defence Costs**.

Loss does not include:

- (a) aggravated, punitive or exemplary damages; or
- (b) fines or penalties imposed by law (which terms, for the avoidance of doubt, do not include any civil compensatory orders as covered by Extension 2.16); or
- (c) any amount which constitutes reduction, set off or return of fees, commission or expenses, in whole or in part, paid to or charged by an **Insured**; or
- (d) any internal or overhead expenses of the **Firm** or the cost of any **Insured's** time; or
- (e) any matters which are uninsurable under any applicable law or where the **Claim** is made.

6.17. Loss of Money means any theft, misappropriation or physical loss, damage or destruction of any money, bearer bond, coupon, stamp, bank note, currency note or negotiable instrument either include:

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

6.18. Period of Insurance means the period specified in the **Schedule** or such lesser period by which the term of this **Policy** may have been shortened by reason of cancellation.

6.19. Policy means the contract of insurance between **Us** and the **Insured** which comprises this policy wording, the **Proposal**, the **Schedule** and any endorsement issued by or on behalf of **Us** varying the policy coverage.

6.20. Pollutant means any contaminant, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, asbestos, asbestos-containing materials, fumes, fungi, acids, alkalis, nuclear or radioactive material, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

6.21. Pollution means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **Pollutant** whether in solid, liquid, gas, odour, noise, vibration, electromagnetic radiation, ionising radiation, thermal or other form at any time.

6.22. Principal means where the **Firm** is or was:

- (a) a company, each director of that company; and
- (b) a partnership, each partner of that partnership and each person held out as a partner; and
- (c) a sole practitioner, that practitioner,

and includes each former **Principal** and each person who becomes a **Principal** during the **Period of Insurance**.

6.23. Professional Services means the **Business** performed or required to be performed by an **Insured** for a fee or any other type of consideration.

6.24. Proposal means the written proposal and any supplementary proposal including any statements and information contained therein and any material relied upon by **Us** in issuing cover under this **Policy**, or any policy issued by **Us** of which this **Policy** is a renewal.

6.25. ProRisk means Professional Risk Underwriting Pty Ltd
ABN 80 103 953 073 AFSL 308076.

6.26. Relative means

- (a) any legal spouse, domestic partner or companion; or
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling or child.

6.27. Retroactive Date means the date specified in the **Schedule**.

6.28. Schedule means the schedule issued to the **Firm** with this **Policy** or any subsequent or amended version of that schedule.

6.29. Subsidiary means any entity:

- (a) over which the **Firm** is in a position to exercise actual direction and control; or
- (b) which is deemed to be a subsidiary of the **Firm** by virtue of any applicable legislation or law.

6.30. Underwriters means Swiss Re International SE Australia Branch (ABN 38 138 873 211).

6.31. Us and **We** means **ProRisk** on behalf of **Underwriters**.

6.32. You and **Your** means the person or entity named as the **Insured** in the **Schedule**.

7. ENDORSEMENTS ATTACHING TO THE POLICY

7.1. Cyber Liability Endorsement

7.1.1 Third Party Liability

It is hereby understood and agreed that **We** will indemnify **You** for amounts **You** become liable to pay as compensation if during the **Period of Insurance** and as a result of **Your Business**, any party brings a **Claim** against **You** arising from:

- (a) the content of the **Your** email, intranet, or **Website** including alterations or additions made by a **Hacker** due to:
 - (i) **Your** unintentional infringement of any intellectual property rights, including any copyright, trademark, passing off;
 - (ii) any defamatory statement on **Your Website** or in the **Your** email, concerning **Your** client or business competitor;
 - (iii) **Your** unintentional breach of confidence or infringement of any right to privacy;
 - (iv) **Your** negligent transmission of a computer **Virus**, worm, logic bomb or trojan horse to anyone with whom **You** transact business with, or who uses **Your Website** in the course of their business;
 - (v) **Your** unauthorised collection or misuse of any data concerning any customer or potential customer of **Yours** which is either confidential or subject to statutory restrictions on its use and which **You** obtained through the internet or **Website** and hold electronically.

7.1.2 First Party Hacker Damage

We will pay reasonable costs and expenses that **You** incur with **Our** prior written consent (which will not be unreasonably withheld) if, during the **Period of Insurance**, a **Hacker** damages, destroys or alters the **Website** or **Computer System**. Such costs and expenses are to be payable to repair or replace the affected part of the **Website** or **Computer System** to the same or equivalent standard and with the same contents or as near as reasonably possible as immediately before such **Website** or **Computer System** was damaged, destroyed or altered.

7.1.3 Continuous Cover

Automatic Extension 2.9 Continuous Cover shall not be available under this Endorsement.

7.1.4 Definitions

The following definitions are applicable to this Endorsement only:

- (a) **Computer System** means **Your** own computer network, including any third party software programs and portable media/computer devices.
- (b) **Hacker** means anyone who specifically targets **You** and gains access to the **Website** via the internet or other external electronic link, solely by electronically circumventing the security systems in place to protect against such access.
- (c) **Programme** means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment.
- (d) **Virus** means **Programmes** that are secretly introduced without **Your** permission or knowledge including but not limited to malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.
- (e) **Website** means any website(s) where **You** have full control over the content and which **You** operate for the promotion of the **Your** own **Business**.

7.1.5 Exclusions

We will not cover **You** for any **Claim** arising directly or indirectly out of or in connection with:

- (a) any **Virus**, worm, logic bomb or trojan horse written or created by any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
- (b) any self replicating or malicious code that was not specifically targeted to any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date system;
- (c) the infringement of any patent;

- (d) the use or provision of any games, or any gaming, gambling, lottery or auctioneering facilities or services;
- (e) the failure or interruption of the service provider by an internet service provider or any telecommunications or other utility provider;
- (f) any pornographic, sexually explicit or obscene material unless arising directly from the activities of a **Hacker**;
- (g) **Your** liability under any contract which is greater than the liability that **You** would have at law without the contract;
- (h) **Your** supply, manufacture, sale, installation or maintenance of any product;
- (i) any statement that **You** knew or ought reasonably to have known was defamatory at the time of publication;
- (j) any failure by any equipment including any hardware or software to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date;
- (k) any trading loss or trading liability including those arising from the loss of any client, account or business;
- (l) any liability arising from any user generated content;
- (m) any claim, including arbitration, brought outside Australia or New Zealand. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts;
- (n) fines and contractual penalties, punitive or exemplary damages;
- (o) any act, breach, failure to act or infringement that **You** deliberately, dishonestly or recklessly committed, condoned or ignored;
- (p) any prior pending litigation, known **Claims** or **Known Circumstances**.

We will not make any payment under this Endorsement if **You** have failed to:

- (a) take reasonable steps to use, maintain and upgrade any program which protects against computer viruses or any unauthorised use of or access to **Your Computer System**, electronic link or Website; and/or
- (b) make backup copies of any data, file or program at reasonably frequent intervals of no less than weekly basis; and/or
- (c) cancel any user name, password or other security protection after **You** knew or had reasonable grounds to suspect that it had been made available to any unauthorised person or parties.

7.1.6 Limit of Liability

The cover provided under this Endorsement is limited to \$25,000 any one **Claim** and in the aggregate inclusive of defence costs which shall be part of and not in addition to the Limit of Liability stated in the **Schedule**. A separate deductible of \$1,000 inclusive of costs will apply under this Endorsement.

In all other respects the **Policy** remains unaltered.