

## BROOKLYN UNDERWRITING VALUERPROTECT PROFESSIONAL INDEMNITY POLICY

### 1. Insuring Clauses

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#### 1.1 Professional Indemnity

The **Insurer** will pay on behalf of the **Insured** all **Loss** up to the **Limit of Liability** which the **Insured** is legally liable to pay by reason of any **Claim** first made against the **Insured** during the **Policy Period** and notified in writing to the **Insurer** during the **Policy Period** for a **Breach of Duty** committed or allegedly committed on or after the **Retroactive Date**.

#### 1.2 Defence Costs

The **Insurer** will also pay on behalf of the **Insured** all **Defence Costs** which the **Insured** incurs in respect of any **Claim** described in Insuring Clause 1.1 above.

Subject to the provisions of this policy, the **Insurer** will advance **Defence Costs** to the **Insured** in respect of a **Claim** prior to its final resolution.

### 2. Definitions

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#### 2.1 **Breach of Duty** means any:

- (a) breach of professional duty;
- (b) breach of the Trade Practices Act 1974 or corresponding sections of Fair Trading Legislation enacted throughout Australia (but not including criminal liability);
- (c) publication or utterance of defamatory material;
- (d) fraudulent or dishonest conduct of any **Employee** for which the **Insured** is legally liable, provided such conduct, or conduct of a similar type, has not been condoned by the **Insured**. (No cover is provided to the person committing the fraudulent or dishonest conduct);
- (e) loss, destruction, damage or misplacement of any **Documents** for which the **Insured** is legally responsible and which after diligent search cannot be found. No cover is provided for the loss, damage, destruction or deterioration of any **Documents** arising out of or attributable to wear, tear or any other gradual environmental cause; or
- (f) Breach of confidentiality, copyright, trademark or design.

by reason of any act, error or omission committed or allegedly committed by the **Insured** solely in the performance of **Professional Services**.

#### 2.2 **Claim** means:

- (a) any written demand; or
- (b) any civil proceeding

for compensation made against the **Insured** but only in respect of the performance of **Professional Services** by the **Insured**.

Any **Claim** or **Claims** arising out of, based upon or attributable to a **Single Breach of Duty** constitutes a single **Claim**.

- 2.3 Continuity Date** means the date specified in the Schedule.
- 2.4 Defence Costs** means any reasonable fees, costs and expenses incurred by or on behalf of the **Insured** with the prior written consent of the **Insurer** (but does not include lost earnings, wages, salaries or other remuneration of the **Insured** in the investigation, defence, settlement or appeal of any **Claim**).
- 2.5 Documents** means all documents of any nature whatsoever including computer records and electronic data material but does not include bearer bonds, cheques, bills of exchange, coupons, stamps, bank or currency notes or any other form of negotiable instrument.
- 2.5 Employee** means any natural person who is not a Principal but who:
- (a) has at any time entered into a Contract of Service with the **Insured** and is compensated for services by the **Insured** and gains at least 90% of their income from the Professional Services performed by or on behalf of the **Insured**;
  - (b) is or was at the time of the **Breach of Duty** giving rise to the **Claim** under the **Insured's** direct control and or supervision in the course of the provision of **Professional Services**.
- 2.7 Excess** means the amount specified in the Schedule.
- 2.8 Insured** means:
- (a) the **Named Insured** and any other natural person, partnership, corporation (including **Subsidiaries**) or other entity specified in the Schedule;
  - (b) any past present or future principal, partner, director, officer or **Employee** of an **Insured** referred to in (a) above but solely while acting within the scope of their duties as such;
  - (c) the estates, heirs, legal representatives or assigns of any deceased, incompetent, insolvent or bankrupt **Insured** referred to in (b) above.
- 2.9 Insurer** means Lloyd's of London.
- 2.10 Limit of Liability** means the amount as specified in the Schedule. Further, the **Insurer** agrees to increase the **Limit of Liability** PROVIDED ALWAYS the Insurer's total liability under the policy shall not exceed:
- (a) in respect of any one **Claim** the **Limit of Liability** as specified in the Schedule; and
  - (b) in respect of all **Claims** an amount equal to twice such **Limit of Liability**.
- 2.11 Loss** means:
- (a) damages or compensation payable by the **Insured** pursuant to an award or judgment entered against the **Insured**;
  - (b) settlements negotiated by the **Insurer** and consented to by the **Insured**;
  - (c) legal costs and expenses awarded against the **Insured** but only in connection with a covered award, judgment or settlement; or
  - (d) **Defence Costs** in respect of a **Claim** which is covered under this policy.

**Loss** does not include:

- (i) fines or penalties (be they civil or criminal);
- (ii) non-compensatory damages including punitive, aggravated or exemplary damages and orders for restitutionary relief;
- (iii) costs incurred by the **Insured** in complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- (iv) taxes;
- (v) costs incurred by the **Insured** in correcting or re-performing any **Professional Services**; or
- (vi) any amount which is uninsurable pursuant to the laws of the Commonwealth of Australia and the Australian State or Australian Territory in which this policy is issued.

**Loss** incurred in respect of more than one **Claim** but resulting from a **Single Breach of Duty** shall constitute a single **Loss**.

**2.12 Named Insured** means the **Insured** specified in the Schedule.

**2.13 Policy Period** means the period of time specified in the Schedule unless the policy is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.

**2.14 Pollutants** means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mold, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

**2.15 Professional Services** means the professional services the **Insured** performs for others for a fee and for which the **Insured** is licensed under the laws of the Commonwealth of Australia or of an Australian State or Territory to perform.

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

**2.17 Single Breach of Duty** means a **Breach of Duty** or any causally connected **Breaches of Duty** affecting one or more than one person or entity.

**2.18 Subsidiary** means any company involved in the performance of the same **Professional Services** which at the commencement of the **Policy Period** is, either directly or indirectly, a subsidiary of an **Insured** company specified in the Schedule pursuant to the laws of the Commonwealth of Australia or the Australian State or Australian Territory in which this policy is issued.

**Subsidiary** also means any entity which becomes a **Subsidiary** during the **Policy Period** provided that within 90 days of the entity becoming a **Subsidiary** the **Insured** has:

- (a) notified the **Insurer** of the new **Subsidiary**; and
- (b) provided the **Insurer** with all the information it has requested regarding the new **Subsidiary**; and
- (c) agreed to any amendments to the provisions of this policy as required by the **Insurer**; and
- (d) paid any additional premium required by the **Insurer**.

Cover for any **Claim** made against any **Subsidiary** applies only for **Breaches of Duty** committed or allegedly committed while such entity is or was a **Subsidiary** of the **Named Corporation**.

If a company ceases to be a **Subsidiary** during the **Policy Period** this policy will continue to provide cover in respect of that **Subsidiary** until the end of the **Policy Period**, but only for **Breaches of Duty** committed or allegedly committed whilst the company was a **Subsidiary**.

### 3. Exclusions

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The **Insurer** is not liable to make any payment for **Loss** in connection with any **Claim**;

#### 3.1 Pollution

arising out of, based upon, attributable to or in any way connected with, directly or indirectly,:

- (a) the actual or alleged, presence, imminent or threatened discharge, dispersal, seepage, release, migration or escape of **Pollutants** at any time; or
- (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or in any way respond to or assess the effects of **Pollutants**.

#### 3.2 Intentional Acts

arising out of, based upon, attributable to or in any way connected with:

- (a) the gaining in fact of any profit or advantage to which an **Insured** was not legally entitled;
- (b) the committing in fact of any criminal, dishonest, fraudulent or malicious act by an **Insured**; or
- (c) the committing in fact of any intentional **Breach of Duty** by an **Insured**.

This Exclusion shall only apply if it is established through a judgment, or any other adjudication adverse to such **Insured**, or any admission by such **Insured** that the relevant conduct did in fact occur.

#### 3.3 Prior Known Facts

arising out of, based upon, attributable to or in any way connected with any:

- (a) actual or alleged facts that might give rise to a **Claim** which were known to the **Insured** prior to the commencement of the **Policy Period**;
- (b) actual or alleged facts which were notified or which can be notified under any policy in force prior to the commencement of the **Policy Period**; or
- (c) pending or prior litigation, or litigation derived from the same or essentially the same facts as might be alleged in such pending or prior litigation, as at the commencement of the **Policy Period**.

#### 3.4 Insured versus Insured

arising out of, based upon, attributable to or in any way connected with a **Claim** brought by or on behalf of:

- (a) any **Insured** or any business enterprise which is owned, managed or operated, by any **Insured**;
- (b) any parent, **Subsidiary**, successor or assign of any **Insured**; or
- (c) any entity affiliated with an **Insured** through common ownership or control.

#### 3.5 Professional Fees

arising out of, based upon, attributable to or in any way connected with disputes involving fees, charges, commissions or any other form of remuneration or consideration for **Professional Services** performed by the **Insured** including but not limited to collecting the **Insured's** fees or commissions from third parties or the return of fees or other compensation paid to the **Insured**.

### 3.6 **Beneficial Interest**

arising out of, based upon, attributable to or in any way connected with any transaction in which any **Insured** has a direct or indirect beneficial ownership or interest as a buyer or seller of real property.

### 3.7 **Trade Debts**

arising out of, based upon, attributable to, or in any way connected with any trading debt incurred by the **Insured** or any guarantee given by the **Insured** for a debt.

### 3.8 **Contractual Liability**

arising out of, based upon, attributable to or in any way connected with:

(a) any contractual liability or assumed liability; or

(b) any liability under any guarantee or warranty,

except to the extent that:

(i) such liability is assumed in the normal performance of **Professional Services**; and

(ii) the **Insured** would in any event be legally liable in the absence of such contract, assumption, guarantee or warranty.

### 3.9 **Insolvency**

arising out of, based upon, attributable to or in any way connected with, directly or indirectly, an **Insured's** actual or alleged insolvency or bankruptcy, or their actual or alleged inability to meet any or all of their debts as and when they fall due.

### 3.10 **Discrimination**

arising out of, based upon, attributable to, or in any way connected with any unlawful discrimination on any basis including but not limited to race, religion, ethnic background, national origin, gender, sexual preference, age, handicap, disability, marital status or pregnancy.

### 3.11 **Occupier's Liability**

arising out of, based upon, attributable to or in any way connected with any occupation or ownership, or any deemed occupation or ownership, by the **Insured** of any real property.

### 3.12 **Directors & Officers' Liability**

arising out of, based upon, attributable to or in any way connected with an **Insured** acting in the capacity of a director or officer of a company or other type of organisation.

### 3.13 **Geographical Limitation**

arising out of, based upon, attributable to, or in any way connected with any acts, errors or omissions, or series of acts, errors or omissions, committed in the United States of America or the Dominion of Canada, their Territories and/or Protectorates.

### 3.14 **Jurisdictional Limitation**

arising out of, based upon, attributable to, or in any way connected with any legal action or litigation brought in a court or tribunal outside of Australia or any legal action or litigation brought in a court or tribunal in Australia to enforce a judgment entered by a court or tribunal outside of Australia.

### 3.15 **Valuers Registration**

arising out of, based upon, attributable to, or in any way connected with any valuations undertaken by, or on behalf of the **insured**, by any person who, at the time the valuation was performed, was not (where required by statute or other regulation) a licensed or registered valuer in the jurisdiction in which the property that was the subject of the valuation was located.

### 3.16 Failure to Sight, Inspect and Record Valuations

arising out of, based upon, attributable to, or in any way connected with any valuation for which the **Insured** failed to:

- (a) Personally inspect and identify the property, plant, machinery or equipment being valued, including the interior of buildings, and recording the relevant measurements; or
- (b) Record proper field and file notes relating to enquires relative to the basis of the valuation.

However, clause (a) above will not apply to any kerbside valuation, restricted assessment or restricted valuation that has been conducted in strict accordance with the Restricted Valuation supporting Memorandum as set down by the Australian Property Institute.

### 3.17 Assignment Of Valuations

arising out of, based upon, attributable to or in any way connected with the any **Claim** relating to:

- a) Assignment of a valuation ('the initial valuation');
- b) Confirmation of the initial valuation;
- c) Reissue of the initial valuation; or
- d) Other act which has the effect of assuming or extending responsibility to any person other than the person or persons to whom the initial valuation was addressed ('other act');

Provided by the **Insured** unless:

- 1) the initial valuation was dated within 3 months of the request for the assignment, confirmation, reissue or other act; AND
- 2) 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, for clarification purposes, the above exclusion is not intended to apply to a revaluation where the **Insured** has reinspected the property and undertaken further investigation and analysis or 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.

### 3.18 Solicitors Funds

arising out of, based upon, attributable to or in any way connected with any valuation undertaken by the **Insured** for any solicitors' mortgage facility (other than a mortgage facility that is registered as a Managed Investment Scheme pursuant to the provision of the Managed Investment Act 1998) or any solicitor arranged loan or mortgage.

### 3.19 Prudent Lenders Clause

arising out of, based upon, attributable to or in any way connected with any valuation undertaken by the **Insured** for any Managed Investment Scheme (as defined by the Managed Investments Act 1998) or any lender that is subject to the provisions of the Managed Investment Act 1998 unless the following "Prudent Lender Clause" (or a clause with materially the same effect) is included in any such valuation report-

"This valuation is prepared on the assumption that any lender referred to in the valuation report or to whom it may be validly assigned (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."

This exclusion shall not apply unless a similar disclaimer of liability has been used on past valuations.

### 3.20 Valuations for Second Mortgages

arising out of, based upon, attributable to or in any way connected with any valuation undertaken by the **Insured** for the purpose of a mortgage other than a first mortgage unless the **Insured** can establish to the satisfaction of the **Insurer** that no party comprising the **insured** was aware at any time prior to the establishment of such mortgage that the valuation would be utilised for such purpose.

### 3.21 Market Movement Clause

arising out of, based upon, attributable to or in any way connected with any valuation carried out by the **Insured** for a lender unless it includes the following clause:

"This valuation is current at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period of time (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 responsibility or accept any liability where the valuation is relied upon after the expiration of ninety (90) days from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation."

This exclusion shall not apply unless a similar disclaimer of liability has been used on past valuations.

## 4. Conditions

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### 4.1 Continuity

In the absence of fraudulent non-disclosure, where a **Claim** that would otherwise be covered by this policy is excluded by Exclusion 3.3(a), then cover is provided under this policy for that **Claim**, provided always that:

- (a) the **Insured** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**; and
- (b) the cover provided under this Extension shall be in accordance with the provisions of the policy in force when the **Insured** first became so aware.

### 4.2 Notification of Claims

The **Insured** shall as a condition precedent to its right to be indemnified under this policy give written notice to the **Insurer** of any **Claim** first made against the **Insured** as soon as practicable during the **Policy Period**. If during the **Policy Period** written notice of a **Claim** made against an **Insured** is given to the **Insurer** pursuant to the provisions of this policy, then any subsequent **Claim** arising out of, based upon or attributable to the facts alleged in the **Claim** previously notified to the **Insurer** or alleging **Breaches of Duty** which are causally connected to any **Breaches of Duty** alleged in the previously notified **Claim**, shall be considered made against the **Insured** and notified to the **Insurer** at the same time notification of the previous **Claim** was given.

All notifications must be in writing and properly addressed to the **Insurer** at the following address:

Attention: Claims Manager  
Brooklyn Underwriting  
PO Box 101 Grosvenor Place, NSW, 1220

Telephone: (02) 8274 8177

Facsimile: (02) 9252 2538

### 4.3 Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability**. **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**. The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.

Regardless of the number of years this policy shall continue in force and irrespective that it is or may be renewed and regardless of the number of premiums paid, the **Limits of Liability** as specified in the Schedules of each policy shall not accumulate from year to year or from **Policy Period** to **Policy Period**.

### 4.4 Excess

The **Insurer** shall only pay for the amount of any **Loss** which is greater than the **Excess**. The **Excess** is to be borne by the **Insured** and shall remain uninsured.

A single **Excess** amount shall apply to **Loss** arising from all **Claims** alleging a **Single Breach of Duty**.

### 4.5 Defence and Settlement of Claims

Subject to the **Limit of Liability** and the **Excess**, the **Insurer** has the right and duty to defend any **Claim** brought against the **Insured** and the **Insured** will at their own cost render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim**.

The **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this policy. They shall also give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Loss** and determine the **Insurer's** liability under this policy.

As a condition precedent to the **Insurer's** liability for **Loss** arising out of any **Claim**, the **Insured** shall not admit or assume liability for, or make or agree to make any payment in connection with any **Claim**, agree to any settlement or judgment or incur any **Defence Costs** without the **Insurer's** prior written consent. Only those settlements, judgments and **Defence Costs** which have been consented to by the **Insurer** in writing shall be recoverable as **Loss** under this policy.

The **Insurer** may make investigation, conduct negotiations and with the written consent of the **Insured** settle any **Claim** where settlement has been agreed to by the parties being indemnified or has been recommended by a Senior Lawyer pursuant to Condition 4.7. If consent to such settlement is withheld by any **Insured** then the **Insurer's** liability for all **Loss** on account of that **Claim** shall not exceed the amount for which the **Insurer** could have settled the **Claim** plus the costs and expenses incurred to the date such settlement was recommended in writing to the **Insured**.

The **Insurer** has the right at any time after notification of a **Claim** to make a payment to the **Insured** of the **Limit of Liability** relating to that **Claim** and upon making such payment all liability of the **Insurer** to the **Insured** including liability in respect of costs and liability to defend any action in respect of that **Claim** shall cease.

#### 4.6 Allocation of Defence Costs

If any **Claim** involves both covered matters and matters not covered by this policy, a fair and proper allocation of any **Defence Costs**, settlements or judgments shall be made between the **Insured** and the **Insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

If an allocation cannot be agreed between the **Insured** and the **Insurer** then the **Insurer** shall, at the request of the **Insured**, resolve the matter by arbitration. The arbitrator shall be mutually agreed by the parties to the arbitration, or in the absence of mutual agreement appointed by the President of the Law Society or equivalent organisation in the region in which the **Defence Costs** were incurred. The costs of the arbitration shall be borne by the **Insurer** and the **Insured** equally.

The allocation finally agreed upon shall be applied retrospectively to any **Defence Costs** incurred prior to the determination. If, however, an allocation is determined by a court it shall be binding on all parties and the **Insurer** shall apply it retrospectively to any payments made prior to the determination.

#### 4.7 Settlement of Disputes Arising Under the Policy

Should a dispute arise as to whether any **Insured** should be required to contest any legal proceedings then the **Insurer** agrees to the appointment, at the **Insured's** request, of a Senior Lawyer (to be mutually agreed upon by the **Insured** and the **Insurer**, or in the absence of mutual agreement to be appointed by the President of the Law Society or equivalent organisation in the jurisdiction in which the legal proceedings were first served) to advise whether or not such proceedings should be contested or settled. The Senior Lawyer shall take into consideration all relevant issues including the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action. The costs of the Senior Lawyer's opinion shall be borne by the **Insurer** and the **Insured** equally.

#### 4.8 Subrogation

If any payment is to be made under this policy in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery.

#### 4.9 Cancellation

The **Named Insured** may cancel this policy by providing written notice to the **Insurer** in which case the **Insurer** will allow a pro-rata refund of the Premium for the unexpired Policy Period.

The **Insurer** may cancel this policy as and in the manner permitted by law in which case it will provide a pro-rata refund of the Premium for the Unexpired Policy Period.

#### 4.10 Authorisation

It is agreed that the **Named Insured** acts on behalf all **Insureds** with respect to the exercise of all their rights and the discharge of all their duties in respect of this policy, including but not limited to:

- (a) the notification of **Claims**;
- (b) the receiving of any notice of cancellation;
- (c) the payment of premium and the receipt of any refund of premium that may become due;
- (d) the payment of the **Excess**;
- (e) the negotiation and receipt of any Endorsement;
- (f) the receipt of all amounts payable by the **Insurer** under the policy.

#### 4.11 Assignability

This policy and any rights under or in respect of it can not be assigned without the **Insurer's** prior written consent.

#### 4.12 Confidentiality

The **Insured** shall make all reasonable efforts not to disclose the existence of this policy to any person except to professional advisers or as required by law, court order or prescriptive commercial practice.

#### 4.13 Non-Imputation

No state of mind or knowledge possessed by any **Insured** shall be imputed to any other **Insured** for the purpose of determining whether any Exclusion in this policy applies.

#### 4.14 Governing Law

This policy is to be construed, and any dispute in respect of this policy is to be determined, in accordance with the laws of the Commonwealth of Australia and the Australian State or Australian Territory in which the policy is issued. The parties agree to submit to the exclusive jurisdiction of the Australian courts.

#### 4.15 Policy Interpretation

Headings are included for convenience only and do not affect interpretation of the policy. Words and expressions in the singular shall include the plural and vice versa. Words in bold lettering have special meaning and are defined in the policy. Words that are not specifically defined in this policy have the meaning normally attributed to them.

#### 4.16 Policy Validity

This policy is not binding upon the **Insurer** unless it is countersigned on the Schedule by an authorised representative of the **Insurer**.