



## **REAL ESTATE AGENTS**

# **PROFESSIONAL INDEMNITY INSURANCE**

## **Non-Franchise Operators**

## **POLICY WORDING**

### **IMPORTANT NOTICE TO THE INSURED**

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary.

Version Number: V2PIREN100-0608

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**Insurer**

The policy is underwritten by Millennium Underwriting Agencies Pty Ltd (ABN: 38 079 194 095) through arrangement with Certain Underwriters at Lloyd's.

**About Millennium Underwriting Agencies Pty Ltd**

Millennium Underwriting Agencies Pty Limited ABN 38 079 194 095, AFS Licence Number 246721 T/As Millennium General Insurance is part of the MGA Whittles Group of Companies. Established in 1998, Millennium General Insurance is an insurance claims and underwriting facility offering market leading policies.

**Association with an Insurance Broker**

We have an association with MGA Insurance Brokers Pty Ltd (ABN 29 008 096 277). MGA Insurance Brokers Pty Ltd and Millennium Underwriting Agencies Pty Ltd have some common directors and a proportion of the shares of each Company have common ownership.

MGA Insurance Brokers Pty Ltd are members of the Austbroker Group and Austbrokers have an equity interest in their business.

**The cost of this insurance policy**

The total premium is the amount we charge you for this insurance policy. It includes the amount which we have calculated will cover the risk, and any taxes and government charges. The premium and any taxes and government charges will be shown on your policy schedule.

When calculating your premium we take a range of factors into account. These factors, and the degree to which they affect your premium, will depend upon the information you provide to us.

**Duty of Disclosure**

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be Insured under the Policy, and if so, on what terms.

- **You do not have to tell us about any matter**

- that diminishes the risk
- that is of common knowledge
- that we know or should know in the ordinary course of our business as an Insurer, or
- which we indicate we do not want to know

- **If you do not tell us**

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

**Privacy**

We are covered by the Federal Privacy Act and its National Privacy Principles (NPPs), which set out standards for the collection, use, disclosure and handling of personal information.

We endeavour to protect any personal information that we hold for misuse and loss, and to protect it from unauthorized access, modification and disclosure.

For our complete Privacy Policy or for further information please contact our Privacy Officer during normal business hours on (08) 8291 2300.

**The General Insurance Code of Practice**

Underwriters at Lloyd's and Millennium Underwriting Agencies Pty Ltd 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.

**Dispute Resolution**

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

Any enquiry or complaint relating to this Insurance should be referred to the Complaints Officer at Millennium Underwriting Agencies in the first instance.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact Peter Fryer at:

Lloyd's Australia Limited  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466  
Email: [peter@lloydsaustralia.com.au](mailto:peter@lloydsaustralia.com.au)

Following receipt of your dispute, you will be advised whether your dispute will be handled by either Lloyd's Australia or the Policyholder & Market Assistance Department at Lloyd's in London.

If your dispute is not resolved in a manner satisfactory to you, they will then provide retail clients eligible for referral to the Financial Ombudsman Service (FOS) with details of that body. FOS is an independent body that operates nationally in Australia and aims to resolve disputes between you and your insurer.

Retail clients not eligible for referral to the FOS, and wholesale clients, may be eligible for referral to the Financial Ombudsman Service (UK).

**Evidence of Value**

Please retain receipts of purchase or proof of value of all property insured by this Policy so that you can prove the amount of any loss if you have to claim under this policy.

**Cooling-off Information**

You have a cooling-off period. During the cooling-off period, you may return your policy to your Financial Services Provider to obtain a refund.

You may do this by notifying your Financial Services Provider in writing or electronically.

You may only exercise this right during the period of 14 days starting earlier of:

- The time you received confirmation of this insurance transaction, or
- The end of the 5<sup>th</sup> day after the day on which the policy was issued to you.

You cannot exercise this right at any time after:

- You have exercised a right or power under your Policy (e.g. you have made a claim), or
- Your rights or powers under the policy have ended.

If your policy is for an event that will start and finish within the 14 day cooling-off period, you can only exercise your right before the event starts or the expiry of the cooling-off period, whichever is the earlier. For example, for travel insurance, the commencement of the journey is the event.

If you exercise your right to return this policy then it is terminated with effect from that time.

Your Financial Services Provider will give you a pro rata refund. Your Financial Services provider may deduct from the refund:

- Any tax which we have been paid or must be paid and which is not refundable, and
- Any reasonable administration and transaction costs.

**Third Party Interests**

You must inform us of the interests of all third parties (e.g. financiers, lessors) to be covered by this insurance. We will protect their interests only if you have informed us of them and we have noted them on the Certificate.

**Our agreement with you**

This Policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

**Your Policy**

Your Real Estate Agents Professional Indemnity Policy consists of the Policy Terms and Conditions in this document and the Policy Schedule we give you.

Please read your Policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your Policy, please ask us, or your Insurance Broker or Intermediary.

You should keep your Policy Document and Policy Schedule together in a safe and convenient place for future reference.

**Preventing our right of recovery**

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

**How Goods and Services Tax affects payments we make**

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and Taxable Percentage.

**This is a Claims Made and Notified Insurance Policy**

The policy operates on a Claims Made and Notified basis. This means that the policy covers you for claims made against you and notified to us during the Period of Insurance.

**1.1 Insuring Clause**

The Insurer shall indemnify the Insured, up to the indemnity limit, for the amount of any claim first made against the Insured and notified to the Insurer during the policy period in respect of any civil liability to pay compensation and costs which arise out of the Insured's breach of professional duty in the exercise and conduct of the business.

**1.2 Defence Costs**

The Insurer shall also indemnify the Insured for defence costs (including enquiry costs as per the cover provided in the definition of defence costs) where such costs have been incurred with the Insurer's prior written consent (such consent not to be unreasonably withheld or unreasonably delayed). The defence costs are paid in addition to the indemnity limit.

The following extensions are granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance.

## 2.1 Trade Practices Act and other legislation

The Insured is indemnified for any claim first made against the Insured and notified to the Insurer during the policy period which arises out of conduct done in contravention of the Trade Practices Act 1974, Australian Securities and Investments Act 2001 or any State or Territory Fair Trading Act but only where such conduct:

- 2.1.1 Constitutes a contravention of such statute because it:
  - (a) is misleading or deceptive or likely to mislead or deceive; or
  - (b) is the making of a false or misleading representation;
  - (c) is unconscionable; or
  - (d) is in breach of a warranty implied in a contract for the provision of services by any of the above Acts; and
- 2.1.2 is not intentional; and
- 2.1.3 is in the exercise and conduct of the business.

## 2.2 Reinstatement of the Indemnity Limit

If the Limit of Indemnity is exhausted then the Insurer agrees to reinstate the Indemnity Limit, provided that in the aggregate, the Insurer shall be liable for no more than twice the Indemnity Limit.

## 2.3 Dishonesty of Employees

The Insured is indemnified for any claim first made against the Insured and notified to the Insurer during the policy period which arises out of the exercise and conduct of the business brought about, or contributed to, by the dishonest, fraudulent, criminal or malicious act or omission of any person at any time employed by the Insured provided that:

- 2.3.1 there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct of the person concerned;
- 2.3.2 no indemnity in respect of such loss or claim shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.3 the Insured shall, at the request and expense of the Insurer take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.4 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person, shall be deducted from any amount payable under this insurance;
- 2.3.5 the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 2.3.6 nothing herein shall preclude the Insurer from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

## 2.4 Loss of or Damage to Documents

In the event of physical loss of or damage to documents suffered and notified to the Insurer during the policy period, the Insured is indemnified for any claim or reasonable and necessary costs and expenses incurred (although not the Insured's own time) in replacing, restoring or reconstituting any documents which are the property of the Insured or are in the Insured's care, custody or control.

**2.5 Indemnity to Present or Former Principals, Employees and Others**

Present and former partners, principals, directors, consultants and employees of the Insured are indemnified for any claim first made against them and notified to the Insurer during the policy period which arises out of the exercise and conduct of the business.

**2.6 Defamation, Libel and Slander**

The Insured is indemnified for any claim first made against the Insured and notified to the Insurer during the policy period in direct consequence of any defamation, libel or slander by the Insured which arises out of the exercise and conduct of the business.

**2.7 Newly created or acquired subsidiaries**

The Insurer agrees to provide coverage to any entity or subsidiary acquired or created by the Insured during the policy period for a period of up to fourteen (14) days (but never beyond the expiry date of the policy period) from the date of such acquisition or creation. The Insurer may, at its discretion, agree to provide further coverage beyond a period of fourteen (14) days (but never beyond the expiry date of the policy period) where:

- 2.5.1 the Insured has notified the Insurer of the acquisition or creation of the entity or subsidiary and has provided all information requested by the Insurer; and
- 2.5.2 any terms imposed by the Insurer including the charging of any additional premium considered appropriate, have been agreed by the Insured.

Provided always that any coverage provided under this extension will only apply in respect of civil liability arising out of any act, error or omission occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by the Insurer.

**2.8 Run Off cover**

The Insurer agrees that in the event that an Insured entity or subsidiary ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this policy with respect to such Insured entity or subsidiary shall continue until the expiry date of the policy period. Provided always that such coverage shall only apply in respect of civil liability arising out of any act, error or omission occurring prior to the effective date that such Insured entity or subsidiary ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by the Insurer.

**2.9 Severability**

The Insurer agrees that:

Where this policy insures more than one Insured, any conduct on the part of any person who is employed by, is a director or partner of another Insured whereby such person:

- 2.9.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- 2.9.2 made a misrepresentation to the Insurer before this contract of insurance was entered into,

Shall not prejudice the right of any other Insured to indemnity as may be provided by this policy.

Provided always that:

- (a) such other Insured, its directors or employees shall be entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard shall be upon the Insured;
- (b) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise the Insured in writing of all known facts in relation to such conduct; and

- (c) enquiry has been made, before the contract of insurance was entered into with the Insurer, of each Insured and persons who make up the Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit the Insured's duty of disclosure owed by the entities or persons that make up the Insured.

## OPTIONAL EXTENTIONS

If stated in the schedule as covered in respect of each extension then each of the following extensions apply:

### 2.10 Fidelity

The Insurer agrees to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any person employed by the Insured. Provided always that:

- 2.10.1 such loss is first discovered by the Insured during the policy period and is notified in writing to the Insurer within twenty-eight days of the date of such discovery (but never beyond the expiry date of the policy period);
- 2.10.2 there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the of the person concerned;
- 2.10.3 no indemnity in respect of such loss shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.10.4 the Insured shall, at the request and expense of the Insurer take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.10.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person, shall be deducted from any amount payable under this insurance;
- 2.10.6 the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 2.10.7 nothing herein shall preclude the Insurer from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.10.8 the maximum amount payable is \$50,000 which is part of the total indemnity limit and not in addition.

The following claims conditions apply to this insurance:-

**3.1 Discovery of a Claim**

If during the policy period the Insured receives notice of any claim that is indemnifiable under this insurance the Insured shall give notice to the Insurer as soon as practicable. Such notice to be given to the persons shown in the schedule.

**3.2 Admission of Liability**

In the event of any claim, the Insured shall not admit liability and no admission, offer, promise or payment shall be made by the Insured without the Insurers prior written consent.

**3.3 Conduct of Claims**

Following notification of any claim, the Insurer shall be entitled to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured shall co-operate with and give all such assistance as the Insurer may reasonably require.

**3.4 Claim Settlements**

The Insurer may at any time pay (or agree to pay) to the Insured in connection with any claim or claims the indemnity limit (less the excess, any sums already paid and unpaid defence costs incurred with the Insurers prior written consent) and upon such payment (or agreement to pay) the Insurer shall not be under any further liability in respect of such claim or claims except for defence costs incurred prior to such payment (or agreement to pay) with the Insurers prior written consent.

Notwithstanding such payment (or agreement to pay) by the Insurer, in no circumstances will the Insurer be liable in respect of such claim or claims for an amount greater than otherwise provided for in this policy. In the event that:

- 3.4.1 The Insurer has made a payment in excess of the amount for which the Insurer would otherwise have been liable in accordance with the policy in respect of such claim or claims, the insured shall refund to the Insurer that proportion of the payment which exceeds the amount which the Insurer would otherwise have been liable for in accordance with the policy.
- 3.4.2 The Insurer has agreed to pay an amount in excess of the amount which the Insurer would otherwise have been liable for in accordance with the policy in respect of such claim or Claims, the Insurers liability in respect of such agreement shall be limited to the amount which the Insurer would otherwise have been liable for in accordance with the policy.

**3.5 The Insurers and the Insureds right to defend**

The Insured shall be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and the Insurer or failing agreement to be appointed by the President of the NSW Bar Association) shall advise that, taking due account of the interests of both the Insurer and the Insured, such proceedings should not be contested.

If the Insured wishes to continue to contest any claim which the Insurer wishes to settle, the Insured may do so. However, the Insurers liability in respect of that claim shall thereafter be limited to the amount for which the claim could in fact have been settled plus defence costs incurred with the Insurers prior written consent to the date upon which they would have settled it, less the excess.

**3.6 Excess**

The Insured is liable for the amount of any excess stated in the schedule and the Insurer shall have no liability for the amount of any excess.

The following general conditions apply to this insurance:-

**4.1 Insurance Contracts Act 1984**

The Insurer will act in accordance with the Insurance Contracts Act 1984 (Cth).

**4.2 Terms of Payment**

All Premiums due to the Insurer under this policy will be paid to Millennium Underwriting Agencies within 30 days from the policy's inception.

**4.3 Cancellation**

The circumstances and manner in which this insurance may be cancelled by the Insurer is governed by the Insurance Contracts Act 1984 (Cth).

**4.4 Subrogation**

If any payment is made by the Insurer, the Insured grants to the Insurer all rights of recovery against any parties from whom a recovery may be made and the Insured shall take all reasonable steps to preserve such rights.

**4.5 Retroactive Date**

Where a retroactive date is specified in the schedule, this insurance shall not indemnify the Insured for any claim notified to the Insurer and arising out of the exercise and conduct of the business prior to the said retroactive date.

**4.6 Claims Aggregation**

Where two or more claims arise from the same original cause or single source or event then all such claims shall constitute one claim under the policy and

4.7.1 only one excess shall be payable by the Insured; and

4.7.2 the maximum amount payable by the Insurer in respect thereof shall not exceed the indemnity limit.

**4.7 Service of Suit**

The Underwriter hereon agree that:

(i) In the event of a dispute arising under this insurance, the Underwriters at the request of the Assured 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.

(ii) Any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

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

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

This insurance shall not indemnify the Insured against any claim or for any loss arising out of, directly or indirectly related to, or in connection with:

**5.1 Previously Known Claim or Circumstance**

any:

- 5.1.1 claim actually made upon the Insured prior to the inception of this policy;
- 5.1.2 fact, matter or circumstance known to the Insured, at any time prior to the inception of this policy, and which the Insured knew or a reasonable person in the Insureds profession could, in the circumstances, be expected to know or have known might give rise to a claim against the Insured;
- 5.1.3 fact, matter or circumstances disclosed by the Insured to the Insurer prior to the inception of this policy, whether in the proposal or otherwise; or
- 5.1.4 fact, matter or circumstance notified by the Insured to any prior Insurer, for the purposes of attaching coverage under an earlier policy to any claim or claims which might arise out of it.

**5.2 Trading Losses and Insolvency**

- 5.2.1 any trading losses or trading liabilities incurred by any business managed or carried on by the Insured, but this exclusion does not to apply to any claims made against the Insured for negligence in the normal course of the Insureds conduct of any receivership; or
- 5.2.2 the insolvency of the Insured.

**5.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages**

any fine or penalty or any multiple, exemplary, punitive or aggravated damages.

**5.4 Nuclear Risks**

any of the following:-

- 5.4.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.4.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**5.5 War and Terrorism**

any of the following:-

- 5.5.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority
- 5.5.2 any act or acts of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation
- 5.5.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.5.1 and/or 5.5.2 above.

The burden of proving that a claim does not fall within this exclusion shall be upon the Insured.

**5.6 Toxic Mould, Pollution and asbestos**

5.6.1 toxic mould, seepage, pollution or contamination of any kind; or

5.6.2 asbestos unless:

- (a) as a direct result of the Insureds breach of professional duty as a real estate agent; and
- (b) is not in connection with bodily injury.

**5.7 USA/Canada**

5.7.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates or judgment registered or lodged in connection with such an action; or

5.7.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

**5.8 Loss of Documents - Magnetic or Electrical Media**

The physical loss of or damage to documents which are stored on magnetic or electrical media unless such documents are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the documents to their original status.

**5.9 Liability arising out of Employment**

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

**5.10 Liability involving Transport or Property owned by the Insured**

The ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.

**5.11 Contractual Liability**

Any claim in respect of any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement

5.11.1 to pay liquidated damages or any penalty; or

5.11.2 in the nature of an indemnity, hold harmless, warranty or guarantee.

**5.12 Supply of Goods**

The sale, manufacture, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including the sale and/or supply of hardware and/or software by the Insured.

**5.13 Directors' and Officers' Liability**

The Insured being a director, officer or trustee of the Insured (as opposed to those duties and functions carried out in furtherance of the business) or from the acceptance of any directorship or trusteeship in any other company not forming part of the Insured.

**5.14 Fraud, Dishonesty or Criminal Act by a partner or director**

Any act, error or omission of any person who is a partner or director of the Insured which is dishonest, fraudulent, criminal or malicious, or any claim where any person has committed a dishonest, fraudulent, criminal or malicious act except as covered by automatic extension 2.4.

**5.15 Extensions**

- 5.15.1 any claim covered by an extension to this policy except to the extent of cover expressly provided for in that extension; or
- 5.15.2 the Trade Practices Act 1974, Australian Securities and Investments Act 2001 or any State or Territory Fair Trading Act , except as covered under Automatic Extension 2.1.

**5.16 Refund of Professional Fees**

Any claim for return, refund or disgorgement of any professional fees, charges, commissions or other remuneration of whatsoever kind received by, paid or payable to the Insured in connection with the business.

**5.17 Failure to arrange Insurance or finance**

A failure by the Insured to arrange insurance or finance.

**5.18 Valuations**

property or business valuations.

**5.19 Investment Advice**

The giving of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial return (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any investment or portfolio of investments.

**5.20 Associated Companies**

Made against the Insured by any firm, company or partnership in which the Insured or any director, partner or principal of the Insured has a financial or executive interest unless emanating from an independent and unrelated third party

**5.21 Bodily Injury**

Injury, disease, illness (including mental stress) or death of any person(s) or loss of or damage to property (except as provided under extension 2.4). Provided that this exclusion will not apply where there is a breach of professional duty by the Insured and:

- 5.21.1 the Insured carried out and recorded in writing a thorough risk management inspection of the property (covering, at least, any identification of any Hazard, including any defects or maintenance and cleaning issues):
  - (a) [in the case where the Insured is retained to manage property] within 12 months prior to the occurrence giving rise to the injury, disease, illness or death of any person; or
  - (b) [in the case where the Insured is retained to sell or lease property] prior to providing access to the property to members of the public for inspection; and
- 5.21.2 provided to its client, within 7 days of the inspection, a written report (including recommendations to repair, remove or address any hazard including any defects or maintenance and cleaning issues); and
- 5.21.3 the Insured kept written file notes of all discussions with tenants and/or its client(s) in respect of any hazard.
- 5.21.4 the maximum payable is \$ 2,500,000 which is part of the total indemnity and not in addition.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect.

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear, whether they are used in the plural or singular form, they are deemed to have the meaning set out below:-

**6.1 Business**

Shall mean advice given and service(s) performed by or on behalf of the Insured as described in the schedule provided that such description shall at all times be interpreted by reference to the advice and services declared in the Insureds proposal and accepted by the Insurer.

**6.2 Claim**

Shall mean:

- 6.2.1 any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the Insured claiming damages or other compensatory remedy; and
- 6.2.2 the positive assertion in writing of a legal entitlement to damages or other compensatory remedy in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue it.

**6.3 Co-Operate**

Shall mean that the Insured:

- 6.3.1 assists the Insurer and their duly appointed representatives to put forward the best possible defence of a claim within the time constraints available;
- 6.3.2 shall have adequate internal systems in place, which will allow ready access to material information; and
- 6.3.3 shall at all times and at its own cost give to the Insurer or their duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

**6.4 Defence Costs**

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim in respect of which the Insurer is liable to indemnify the Insured under the terms of this insurance. This includes the cost of representation at any enquiry or other proceedings which have a direct effect on the defence of any claim notified under the terms of this insurance however the amount payable in regards to representation at any enquiry or other proceedings is limited to \$25,000.

**6.5 Documents**

Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, bank or currency notes and other negotiable paper.

**6.6 Excess**

Shall mean the sum shown in the schedule unless otherwise stated in this insurance and shall be the first amount of each claim which is payable by the Insured.

**6.7 Indemnity Limit**

Shall mean the sum shown in the schedule which is available to indemnify the Insured in respect of each claim provided that all claims payable under this insurance including any defence costs shall not exceed in the aggregate the limit shown in the schedule.

**6.8 Hazard**

Shall mean a state of physical property which creates a foreseeable risk of injury, disease, illness or death of any person which is not far fetched or fanciful.

**6.9 Insured**

Shall mean the person(s), partnership, company, corporation or other entity named as the Insured in the schedule including any predecessors in business named in the proposal submitted to the Insurer.

**6.10 Policy Period**

Shall mean the period shown in the schedule plus any extensions to the period which may be granted by the Insurer.

**6.11 Pollution**

Shall mean any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which shall mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, shall include offence caused to any of their senses) into or onto any water, land or air.

**6.12 Schedule**

Shall mean the document entitled Schedule that relates to this insurance.

**Millennium Underwriting Agencies Pty Ltd**

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