

## PROFESSIONAL INDEMNITY

### Estate Agents

**WHEREAS** the person or persons or partnership or Company named in the Schedule (hereinafter referred to as “the Insured”, which term shall include his/their executors or personal representatives) has/have submitted a written proposal containing particulars and statements which (together with any other information which may have been supplied) it is agreed shall be the basis of this contract and are to be considered as incorporated herein, and have paid the premium stated in the Schedule.

## INSURING CLAUSE

**NOW THEREFORE**, We, the Underwriters, hereby agree to indemnify the Insured up to but not exceeding the sum stated in the Schedule for any sum or sums which the Insured may become legally liable to pay arising from any claim or claims first made against them and notified to the Underwriters during the Certificate period as a direct result of any negligent act, error or omission in the professional conduct of their business, as stated in the Schedule, by the Insured or any partner or previous partner or any person or party employed or engaged by the Insured including sub-contractors, agents or consultants acting on the Insured's behalf and for whom the Insured are responsible.

## COSTS AND EXPENSES

Further it is understood and agreed that the Underwriters will pay in addition to the sum stated in the Schedule the costs and expenses incurred with the Underwriters' written consent in the defence and/or settlement of any claim. However, if a payment in excess of the amount of indemnity available under this Certificate has to be made to dispose of a claim made against the Insured the Underwriters' liability in respect of such costs and expenses shall be such proportion of the total costs and expenses incurred as the amount of the indemnity available under this Certificate bears to the total amount required to dispose of the claim.

## EXCESS

Provided always that the Underwriters shall be liable only, in respect of any claim hereunder, for that part of the claim which exceeds the amount stated as “the Excess” in the Schedule. The Excess shall not be applicable to costs and expenses incurred with Underwriters written consent.

## INDEMNITY TO EMPLOYEES

In the event of a claim being made against any employee of the Insured or former employee of the Insured whilst acting within the scope of his employment with the Insured which, if it had been made against the Insured, would have been the subject of indemnity under this Certificate, Underwriters agree to indemnify such employee in a like manner to the Insured.

## DISHONESTY OF EMPLOYEES

Notwithstanding anything herein contained to the contrary it is noted and agreed that this Policy and all other applicable endorsements are extended to indemnify the Insured for any claim brought about, or contributed to, by the fraudulent, criminal or malicious act or omission of any person at any time employed by the Insured.

## **LOSS OF DOCUMENTS**

Subject to an Excess of £100 each and every claim or loss, this Certificate will also cover the Insured up to a maximum of £100,000 for any reasonable costs and expenses incurred with Underwriters' consent in replacing or restoring any Document which is lost, damaged or destroyed during the Certificate Period. Underwriters will not pay for any loss brought about or contributed to by the dishonesty of the Insured's Partners, Directors or other Employees.

## **LIBEL AND SLANDER**

Notwithstanding anything contained herein to the contrary, it is understood and agreed that this Policy is extended to indemnify the Insured for all sums which the Insured may become legally liable to pay in respect of claims made upon them in direct consequence of any Libel or Slander committed by the Insured in their professional capacity as stated in the Schedule.

## **BREACH OF CONFIDENTIALITY**

Underwriters agree subject otherwise to the terms, conditions and exclusions of this Certificate to indemnify the Insured for claims made during the Certificate period arising from the unintentional breach of confidentiality.

## **PREDECESSORS IN BUSINESS**

It is hereby understood and agreed that cover is extended to include any predecessors in business of the Insured disclosed in writing to Underwriters prior to the inception of this Certificate. This shall be deemed to include Partners, Directors and Principals of those firms. However, such cover will not apply in respect of any work undertaken prior to the Retroactive Date shown in the Schedule (refer Condition 2 of this Certificate).

## **EXCLUSIONS**

This Certificate does not cover any liability whatsoever arising out of:-

1. **GOODS OR PRODUCTS:** any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or from any other business or occupation even though the same may be carried on by the Insured in conjunction with their business as stated in the Schedule.
2. **BODILY INJURY:** Bodily Injury, Sickness (including Mental Stress), Disease or Death sustained by any person arising out of and in the course of their employment by the Insured under a contract of service or apprenticeship with the Insured.
3. **DISHONESTY:** any claim made against the Insured as a result of any dishonest, malicious or illegal acts of any present or previous director principal or partner of the Insured.
4. **MOBILE/IMMOBILE PROPERTY:** the ownership, use, occupation or leasing of property, mobile and/or immobile, by, to or on behalf of the Insured.
5. **TERRITORIAL LIMITS:** work in connection with contracts outside the United Kingdom, Northern Ireland, The Irish Republic, Channel Islands, Isle of Man and Member Countries of the European Union.
6. **JURISDICTION LIMITS:** liability in respect of any action for damages brought against the Insured in a Court of Law outside the United Kingdom, Northern Ireland, The Irish Republic, Channel Islands, Isle of Man and Member Countries of the European Union.

7. **NUCLEAR/WAR:** any claim or loss whether directly or indirectly caused by, or contributed to by, or arising from;
- (i) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof: or
  - (ii) war invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
8. **GRADUAL POLLUTION:**
- (i) personal Injury, Bodily Injury, Sickness (including Mental Stress), or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph (i) shall not apply to liability for Personal Injury, Bodily Injury, Sickness (including Mental Stress), loss of, physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Certificate Period.
  - (ii) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Certificate Period.
9. **PRIOR CLAIMS OR CIRCUMSTANCES:** any claim or circumstance known to the Insured prior to the inception of this Certificate and which the Insured at such time knew or should have reasonably assumed might result in a claim against the Insured.
10. **FINES:**
- (i) fines, prosecution costs or penalties of any kind.
  - (ii) punitive or exemplary damages.
11. **MILLENNIUM:** any claim, loss, liability or costs and expenses directly or indirectly caused by or contributed to or arising from or in connection with any Computer System, whether or not the property of the Insured, not being Year 2000 Compliant.
- In addition this Certificate shall not indemnify the Insured in respect of any claim, loss liability or costs and expenses directly or indirectly caused by or contributed to or arising from in conjunction with any correction or any attempted correction, conversion, renovation, rewriting or replacement of any Computer System related to Year 2000 Compliance.
12. **CONTROLLING INTEREST:** or brought by a firm company or organisation in whom any Partners(s)/Director(s) have a controlling interest unless such claim or claims are brought against the Insured by an independent third party source.

13. **OTHER INSURANCE:** if at the time any claim arises under this Certificate the Insured is or would but for the existence of this Certificate be entitled to indemnity under any other Certificate or Certificates, the Underwriters shall not be liable except in respect of any excess beyond the amount which would have been payable under such other Certificate or Certificates had this Certificate not been effected.
14. **FINANCIAL MATTERS:** any negligence on the part of the Insured in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters
15. **INSOLVENCY:** the insolvency of the Insured or any Insurer, Underwriter, Building Society, Bank or other providers of finance.
16. **CONTRACTOR:** Any contract where the Insured acts as a Contractor whether in conjunction with his/their profession as stated in the Schedule or not.
17. **TERRORISM:** Any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Certificate also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

18. **ASBESTOS & TOXIC MOULD:** any loss arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-
- a) Asbestos, or any materials containing asbestos in whatever form or quantity; or
  - b) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; or
  - c) Any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; or
  - d) Any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins.

19. **PATENT:** arising out of actual or alleged infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress, or misappropriation of trade secret

## CONDITIONS

1. **INSURED'S DUTIES IN THE EVENT OF CLAIM OR CIRCUMSTANCE :** It is a condition precedent to Underwriters' liability under this Certificate that:-

- (a) (i) The Insured shall give to Underwriters, unless another person is so nominated in the Schedule for such purpose, notice in writing as soon as practicable or within 14 days, whichever is the earlier
- (a) of the receipt of any claim made against them or any of them
  - (b) of the receipt of notice whether written or oral of the intention of any person or body to make a claim against them
  - (c) of the receipt of any allegation which may give rise to a claim against them
  - (d) of the discovery of any loss suffered by them or any of them
  - (e) of the discovery of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present Partner, Director or Employee of the Insured
  - (f) of the discovery of any matter which may be the subject of indemnity under the terms, conditions or extensions of this policy

always provided that such notification is made during the Certificate Period, and furthermore the Insured shall provide all information in respect of the matter so notified as is in their possession at the time of notification.

- (ii) If during the Certificate Period the Insured shall become aware of any circumstance which may subsequently give rise to a claim against them or loss sustained by them the Insured shall give notice of the circumstance in writing to Underwriters, or such person nominated in the Schedule for such purpose, as soon as practicable and in any event within 30 days of their becoming aware of the circumstance. Such notice having been given, any subsequent claim made against the Insured or loss sustained by them arising out of that circumstance shall be deemed to have been first made or sustained during the Certificate Period.

**NOTE:** The Civil Procedure Rules enable the Court to impose severe costs sanctions on litigants who act unreasonably either before or after the commencement of proceedings whether or not the litigant in question is successful in its case. Pre-action Protocols will set standards by which the reasonableness of the litigant's conduct will be judged. In order to try to ensure that the requirements of the rules in any Protocol are met notifications must be made to Underwriters immediately that a claim is made and before a response is given to the claimant. As this is a condition precedent to Underwriters liability under the Certificate non-compliance with it entitles Underwriters to refuse to provide indemnity in respect of the relevant claim.

- (b) (i) The Insured shall not admit liability for or settle or make or promise any payment in respect of any claim which may be the subject of indemnity hereunder or incur any costs or expenses in connection therewith without the written consent of the Underwriters who if they so wish shall be entitled to take over and conduct in the name of the Insured the defence and/or settlement of any such claim. In doing so Underwriters may conduct the defence and/or settlement as they, in their absolute discretion, think fit. This right will include, but is not limited to, the right to commit the Insured's excess to any settlement and to make admissions in respect of the whole claim, or any part of the claim, or in respect of any issue on which the claim, or part of it depends.
- (ii) The Insured shall at all times give to Underwriters and/or their duly appointed representatives all such information, co-operation and assistance as Underwriters may reasonably require. Insofar as the claim is subject to the Civil Procedure Rules such assistance will extend, but is not limited to the provision of signed statements or depositions as may be required to facilitate compliance with all, and any, civil procedure rules, practice directions and pre-action protocols as may be issued and approved from time to time by the Head of Civil Justice. By way of example, and without limitation, the Insured's obligations will include, inter-alia:
- (a) The provision of full and prompt information, instructions, and or assistance to Underwriters or their duly appointed representatives;
- (b) The undertaking, by an appropriate representative of the Insured, of a reasonable search for documents required to be disclosed in any litigation, together with the provision of a signed disclosure statement in terms advised by legal representatives appointed by Underwriters;
- (c) The provision, by an appropriate representative of the Insured, of a signed statement verifying that he or she believes the facts stated in the defence, statement of case, responses to other parties requests for information or witness statements to be true.
2. **RETROACTIVE DATE:** Where a retroactive date is specified in the Schedule this Certificate will not respond in respect of any claim or loss arising from contracts commenced or work carried out prior to the said retroactive date.
3. **CANCELLATION CLAUSE:** This Certificate can be cancelled by or on behalf of Underwriters by giving 30 days notice in writing to the Insured. A pro-rata amount of the premium will be returned unless the Insured has notified Underwriters of a claim or a circumstance prior to cancellation, in which case no premium will be returned.
4. **AGREEMENT TO PAY CLAIMS:** Underwriters agree to pay claims which may arise under this Certificate without requiring the Insured to dispute any claim unless a Queen's Counsel or lawyer of comparable standing in the territory concerned (to be mutually agreed upon by Underwriters and the Insured) advise that the same could be contested with a reasonable prospect of success by the Insured and the Insured consents to such claim being contested, but such consent is not to be unreasonably withheld. In the event of any dispute arising between the Insured and the Underwriters as to what constitutes an unreasonable refusal to contest a claim at Law, the President for the time being of the Professional Body of which the Insured is a member shall nominate a referee to decide this point (only) and the decision of such referee shall be binding on both parties. In the event of the Insured not being a member of a Professional Body, the President for the time being of the Chartered Institute of Arbitrators shall nominate a referee to adjudicate as aforementioned.

5. **SUBROGATION**: If any payment is made under this Certificate in respect of a claim hereunder Underwriters are thereupon subrogated to all the Insured's rights of recovery thereto however Underwriters shall not exercise any such rights against any employee or former employee of the Insured unless the claim has been brought about or contributed to by any dishonest fraudulent criminal or malicious act of the employee, it being understood that Underwriters shall at all times retain all the Insured's rights of recovery against any person or party who is not an employee of the Insured or former employee of the Insured.
6. **FRAUDULENT CLAIMS**: If the Insured shall make or refer any claim knowing the claim to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims thereunder shall be forfeited
7. **DISCLAIMER OF LIABILITY BY UNDERWRITERS**: In the event of Underwriters at any time being entitled to avoid this Certificate ab initio by reason of any materially inaccurate or misleading information given to Underwriters in the Proposal Form or at any time during the negotiations leading to the inception of this Certificate or as a result of failure to disclose material facts before the conclusion of the Certificate or for any other reason at law, Underwriters may at their election instead of avoiding this Certificate ab initio give notice to the Insured that they regard this Certificate as of full force and effect save that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or which may arise and which is related to circumstances which ought to have been disclosed to the Underwriters in the Proposal Form or which arises out of materially inaccurate or misleading information given to Underwriters. This Certificate shall then continue as if the same had been specifically endorsed ab initio excluding the particular claim or possible claim referred to in the said notice.
8. **INTERPRETATION CLAUSE**: Notwithstanding the Jurisdiction Limits contained herein, any dispute in respect of the interpretation or application of this Certificate, or its terms, conditions and exclusions, will be subject to United Kingdom Courts.
9. **PROPERTY MISDESCRIPTION ACT 1991 EXTENSION CLAUSE**: It is hereby noted and agreed that in the event of a claim being brought in the Civil Courts arising from the Property Misdescription Act 1991 such liabilities would be treated as falling within the ambit of the insuring clause of the Certificate subject to Underwriters not being liable in respect of any criminal penalties or fines  
  
In respect of costs and expenses in defence or settlement of any claim (defence costs) as defined herein Underwriters agree to meet defence costs in respect of a criminal prosecution where Underwriters believe that defending such a charge may bring benefit to the defence of any subsequent potential civil action.
10. **THIRD PARTY ACT 1999 PROVISIONS CLAUSE**: It is hereby noted and agreed that the terms of this Certificate will only be enforceable by the named Insured(s). A person who is not a named Insured has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Certificate but this does not affect any right or remedy of a third party which exists or is available apart from that act.
11. **CHOICE OF LAW**: There is a choice of law applicable to this Certificate but unless Underwriters agree otherwise English law will apply.

**DEFINITIONS:**

“**CLAIM**” shall mean claim or series of claims (whether by one or more than one claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source or the dishonesty of any person or group of persons acting together and any such series of claims shall be deemed to be one claim for all purposes under this insurance.

“**CIRCUMSTANCE**” is understood to include but not restricted to the following

- (i) An intimation of an intention to claim against the Insured
- (ii) Any known direct or indirect criticism or dispute whether expressed or implied relating to performance of the Insured (whether justified or not) which might give rise to third party loss or damage
- (iii) Any known direct or indirect criticism or dispute whether expressed or implied relating to performance (whether justified or not) of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- (iv) Any awareness of the Insured of a failing or real doubt of the efficacy of their own performance or of the performance of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- (v) Any awareness of the Insured, that materials goods, services or actions or actions specified, designed or recommended by the Insured or by a party for whom and for which the Insured is responsible have failed to meet the standard required and which might result in some third party loss or damage

which may be the subject of indemnity under this Certificate.

“**YEAR 2000 COMPLIANT/COMPLIANCE**” shall mean that neither performance nor functionality of the Computer System is affected by dates prior to, during and/or after the Year 2000. In particular:-

Rule 1 No value for current date will cause or give rise to any interruption in operation of the Computer System.

Rule 2 Date based functionality and performance of the Computer System must behave consistently for dates prior to, during and/or after the year 2000.

Rule 3 In all interfaces and data storage of the Computer System the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules.

Rule 4 The year 2000 must be recognised as a leap year by the Computer System.

“**COMPUTER SYSTEM**” shall mean any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode used owned operated or relied upon by the Insured.

“**DOCUMENTS**” shall mean deeds wills agreements maps plans records books letters Certificates Computer System Records forms and documents of whatsoever nature whether written printed or reproduced by any other method (other than bearer bonds coupons bank notes currency notes and negotiable instruments)