

BUSINESS EXPENSE PROTECTION – 06/08

Nova Underwriting Pty Ltd
ABN 42 127 786 823 / AFSL 324767

1.0 INSURING CLAUSES

We will cover **You** for:

- 1.1 **Representation and Production Costs** payable by **You** in connection with an **Inquiry** first reported by **You** to **Us** during the **Insurance Period**.
- 1.2 **Downtime** lost by **You** in connection with an **Inquiry** first reported by **You** to **Us** during the **Insurance Period**.
- 1.3 **Dispute Expenses** payable by **You** in connection with a **Commercial Dispute** first reported by **You** to **Us** during the **Insurance Period**.
- 1.4 **Fee Recovery Expenses** payable by **You** in connection with a **Bad Debt** first reported by **You** to **Us** during the **Insurance Period**.

2.0 DEFINITIONS

- 2.1 **Appointed Representative** means a solicitor or firm of solicitors or other appropriately qualified person appointed by **Us** with **Your** agreement, to act on **Your** behalf.
- 2.2 **Bad Debt** means unpaid fees owed to the **Firm** by a client or former client, which despite **Your** best endeavours, remain unpaid 90 days after payment was due, and which **You** require external assistance to recover and which **We** reasonably believe is capable of being recovered and recovered economically.
- 2.3 **Commercial Dispute** means [except as varied by clauses 3.3 and 3.6] a dispute between the **Firm**:
 - [a] and a supplier of goods or services to the **Firm**, about such goods and services, and/or
 - [b] a recipient of goods and services from the **Firm**, about such goods and services: and/or
 - [c] as landlord or tenant, and any other party as landlord or tenant;

and which is incapable of resolution by the **Firm** without external assistance.
A **Commercial Dispute** does not include a dispute over the **Firm's** fees.

- 2.4 Dispute Expenses** means the fees, expenses and disbursements reasonably, necessarily and properly incurred by **You** with **Our** consent, to resolve a **Commercial Dispute**. “Fees, expenses and disbursements” include **Your** share of the cost of a **Mediator** and any mediation conducted by that **Mediator**.
- 2.5 Downtime** means the value of time reasonably, necessarily and properly incurred with **Our** consent, expended by the **Firm's** principals, partners, directors and other qualified fee earning staff in preparing for, providing information to, or attending an **Inquiry**. The “value of time” will be calculated at the **Firm's** normal client rate for the relevant personnel.
- 2.6 Fee Recovery Expenses** means the fees, expenses and disbursements reasonably, necessarily and properly incurred by **You** to an **Appointed Representative** or licensed debt collection agent, with **Our** consent, in pursuit of the recovery of the **Bad Debt**.
- 2.7 Firm** means the person, corporation [and its subsidiaries] or partnership named in the schedule. **Firm** includes any corporation [and its subsidiaries] or partnership by which the **Firm** [or any part of the **Firm**] was previously known.
- 2.8 Inquiry** means any official investigation, examination, inquiry, hearing or other proceedings ordered or commissioned by any official body or institution arising out of or in connection with the **Firm**, any client or former client of the **Firm**, or any matter in which the **Firm** has provided professional services.
- 2.9 Mediator** means a qualified mediator chosen by **Us** and acceptable to **You** and any other party to the **Commercial Dispute**.
- 2.10 Insurance Period** means the period so specified in the Schedule.
- 2.11 Representation and Production Costs** means the fees, expenses and disbursements reasonably, necessarily and properly incurred by **You** with **Our** consent with respect to:
- being represented before an **Inquiry**;
 - the retention of expert witnesses; and/or
 - the production of documents
- 2.12 Security** means certain Underwriters at Lloyds, each of whom (including their executors and administrators) is only liable for their share of any **Claim**, loss, liability or expense payable by this policy. Details of each syndicate and its share can be obtained from Nova Underwriting Pty Ltd.
- 2.13 Territorial Limits** means anywhere in the world except the United States of America or the Dominion of Canada or their respective protectorates, dependencies or territories.

2.14 We, Us and Our means Nova Underwriting Pty Ltd on behalf of the **Security**.

2.15 You and Your means the **Firm**, and any past, present or future partner, director, employee or consultant of the **Firm**.

3.0 EXCLUSIONS

We will not cover **You** for **Representation Costs, Downtime** or **Dispute Expenses** arising in connection with:

- 3.1** a claim against **You** alleging loss or destruction of, or damage to, any property; or
- 3.2** a claim against **You** alleging the death of, or personal injury to, any person; or
- 3.3** an **Inquiry** conducted, or **Commercial Dispute** involving a supplier or recipient of goods and services located, outside the **Territorial Limits**; or
- 3.4** an **Inquiry** initiated or ordered or commissioned, or a **Commercial Dispute** [whether capable or incapable of resolution by **You** without external assistance] which existed, prior to the **Insurance Period** ; or
- 3.5** a claim against **You** alleging libel, slander, defamation or malicious falsehood; or
- 3.6** a **Commercial Dispute**:
 - 3.6.1** where the supplier or recipient of goods and services is or was **You**, or is or was at law a related body corporate of **Yours**, or is or was **Your** spouse, defacto, parent, child, sister or brother; or
 - 3.6.2** arising from the pursuit of debt by the **Firm** unless a **Commercial Dispute** exists independently of such debt; or
 - 3.6.3** where the supplier or recipient of goods and services is **Us** or any other insurer; or
 - 3.6.4** which is incapable of resolution in favour of the **Firm**; or
- 3.7** a claim brought against **You** by a client of **Your's** alleging a breach of duty owed by **You** in a professional capacity.

We will also not cover **You** in respect of:

3.8 any liability to pay fines, penalties or damages; or

3.9 Representation Costs, Downtime, Dispute Expenses or Fee Recovery Expenses:

3.9.1 incurred or paid prior to Our consent being obtained [unless **We** agree otherwise]; or

3.9.2 which arises from asbestos, except as incurred in connection with an **Inquiry**; or

3.9.3 which arises from:

- war, invasion, acts of foreign enemies, hostilities or warlike operations [whether war be declared or not], civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, 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; or
- any act of terrorism. "Terrorism" includes an act involving the use or threat of force or violence by any person or group[s] of persons, whether acting alone or on behalf of or in connection with an organization[s] or government[s] which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any Government and/or to put the public or any section of the public in fear.

EXCEPT as incurred in connection with an **Inquiry**.

3.10 a **Bad Debt** which existed prior to the **Insurance Period**.

4.0 CONDITIONS

4.1 **Our** liability under this policy shall not exceed the sums stated in the Schedule as being the **Sum Insured** applying to claims under clauses 1.1, 1.2, 1.3 and 1.4. If no sum is stated against any of these clauses, then **We** have no liability under this policy in relation to that clause.

4.2 **You** shall bear the sums / proportions stated in the Schedule as being the Excess applying to claims under clauses 1.1, 1.2, 1.3 and 1.4, prior to/or sharing **Our** liability under this policy.

- 4.3 **We and You** agree that mediation conducted by a **Mediator** will be the preferred means of resolving a **Commercial Dispute**. **You** agree to use **Your** best endeavours to include in **Your** contracts with suppliers, a clause requiring disputes to be mediated by a **Mediator**.
- 4.4 **You** shall give notice to **Us** as soon as practicable of **Your** intention to make a claim under this policy and provide such information as **We** reasonably require to consider / action the claim.
- 4.5 If **You** are dissatisfied with the outcome of an **Inquiry**, and wish to appeal, **You** may approach **Us** for indemnity under this policy for **Representation Costs** associated with such appeal, but it is agreed that such **Representation Costs** are not covered by this policy unless agreed to by **Us** at **Our** sole discretion.
- 4.6 **You** shall co-operate fully with the **Appointed Representative** and provide all information and assistance as required by the **Appointed Representative**. The **Appointed Representative** shall co-operate fully with **Us** and provide such information [whether privileged or not] to **Us** as required.
- 4.7 **You** must inform **Us** immediately of any offer or opportunity to settle a **Commercial Dispute**, and **We** have the right to terminate further payments under this policy if **You** unreasonably refuse to accept an offer or opportunity to settle. **We** have the right to take conduct of any **Commercial Dispute** and negotiate a settlement with the supplier on **Your** behalf.
- 4.8 **Our** agreement to make any payment under this policy, and **Our** appointment of the **Appointed Representative**, does not imply that all **Representation Costs** or **Dispute Expenses** incurred by **You** will be covered by this policy. If in doubt, **You** should consult with **Us** prior to such **Representative Costs** or **Dispute Expenses** being incurred.
- 4.9 **We** agree to provide **You** with **Our** reasons for any denial of cover under this policy. Where cover has been denied under clause 1.3 because **We** reasonably believe that the **Commercial Dispute** is incapable of resolution in **Your** favour, and **You** refuse to settle with the supplier and / or continue to contest the **Commercial Dispute**, **We** will pay the reasonable **Dispute Expenses** incurred by **You** if the **Commercial Dispute** is finally settled in **Your** favour.
- 4.10 Any sums recovered by **You** from any party relating to **Representation Costs**, **Downtime** or **Dispute Expenses** shall be for **Your** benefit PROVIDED THAT once **You** have recouped all amounts **You** have borne under clause 4.2, the surplus [if any] of such recoveries shall be paid to **Us** as shall be sufficient for **Us** to recoup all payments **We** have made under this policy.

- 4.11** In relation to claims under clause 1.2, **We** shall be entitled during normal office hours to inspect **Your** records and documents to verify such claims, and **You** shall provide **Us** with an itemised statement of **Downtime**, supported by bills and / or accounts, at monthly intervals. If the statement is in order, **We** will pay it within 30 days of its receipt.
- 4.12** In the event of a dispute under this policy, **We** and **You** agree, before instituting legal proceedings, to use their best endeavours to resolve the dispute between themselves, failing which, both parties agree to participate in good faith in a mediation conducted by a **Mediator**. The costs of the mediation will be shared equally between the parties.
- 4.13** **We** have the right to terminate payments under clause 1.4 at any time if **We** believe that there are no longer reasonable expectations of recovering the **Bad Debt**. **We** have the right to terminate payments under clause 1.4 if **We** believe that sum of **Fee Recovery Expenses** will exceed the sum of the **Bad Debt**, but in doing so, **We** will become liable for the **Bad Debt**.
- 4.14** Other than for claims managed outside Australia, this policy complies with the Insurance Council of Australia's General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

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

who will refer the matter to Policyholder and Market Assistance at Lloyd's. If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

- 4.15** Any summons or process to be served upon the **Security** 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 behalf of the **Security**, and who is directed at **Your** request to give a written undertaking to **You** that they will enter an appearance on behalf of the **Security**.

BUSINESS EXPENSE PROTECTION SCHEDULE – 06/08
Nova Underwriting Pty Ltd

Attaching to and forming part of policy #

FIRM:

ADDRESS:

INSURANCE PERIOD : From: *4:00 pm on .../.../....
To: *4:00 pm on .../.../....
(*Sydney time)

SUM INSURED: \$ any one claim in the aggregate for the
Insurance Period in respect of Insuring Clauses

EXCESS: \$ each claim plus 20% of the **Sum Insured**

PREMIUM: As agreed

SPECIAL CONDITIONS:

Signed for and on behalf of Nova Underwriting Pty Ltd:

by..... on/...../.....