



**Professional Indemnity & Infidelity Insurance
For
Stock Brokers, Investment Consultants,
Underwriters, Portfolio or Fund Managers
6/2016**

In consideration of the payment of the *premium* and subject to all of the provisions of this policy, the *insurer* agrees as follows.

1. Insurance Cover

The *insurer* undertakes to indemnify the *insured* for any sum or sums the *insured* may become legally liable to pay, including, claimants' costs and expenses, for any *claim* or *claims* first made against the *insured* during the *policy period* and reported to the *insurer* during the *policy period*, as a result of:

- (a) Breach of professional duty, negligent act, error or omission;
- (b) Breach of any of the following laws or of regulations enacted pursuant to such laws:
 - Securities Act 5728 -1968
 - Joint Investment Trust Law, 5754-1994
 - The regulation of the conducting Investment Counselling, Investment Marketing and Portfolio Management Law 5755-1995;
- (c) Physical loss, destruction, theft or damage to *securities*, including wrongful abstraction or removal or where the *securities* have been lost, mislaid or accidentally destroyed;
- (d) Libel and slander made or alleged to have been made by the *insured* or any person or entity acting on the *insured's* behalf;
- (e) *Dishonest or fraudulent acts* on the part of an *employee*. However, the *insurer* shall not indemnify any such person committing, making or condoning any *dishonest or fraudulent acts*.

Which first took place on or after the *Retroactive Date*, and is arising in the course of the *insured's* business as stock brokers &/or investment consultants &/or underwriters &/or portfolio &/or fund managers as well as any other financial service advised to the *insurer* as noted in the Schedule.

The *insurer* shall pay the reasonable and necessary defence costs incurred by the *insured*, as approved in advance by the *insurer*, in defending any covered *claim*. In case such approval has not been obtained in advance, the *insurer* will be liable only for reasonable defence costs.



2. Definitions

2.1 **Claim** shall mean:

- (a) Any written notification containing a demand for indemnity or an intention to hold the *insured* responsible for any damage.
- (b) Any civil suit or proceeding

In case written notification is first given to the *insurer* by the *insured* during the *policy period* of circumstance which may reasonably be expected to give rise to a *claim* in the future against the *insured*, with full particulars as to dates and persons involved; any such *claim* subsequently filed, shall be deemed a *claim* made against the *insured* during the *policy period*.

A *claim* is deemed to have been made at the moment of receipt by the *insured* of the written notification or civil suit or proceeding, as mentioned above.

Several *claims* arising, out of the same cause, irrespective of the actual time such *claims* are made shall be regarded:

- as having been made at the time the first *claim* was made.
- as one and the same *claim*.

2.2 **Controlling Interest** shall mean:

- (i) controlling, directly or indirectly, the composition of the majority of the board of directors; or
- (ii) controlling, directly or indirectly, half or more of the voting power; or
- (iii) holding, directly or indirectly, half or more of the issued share capital.

2.3 **Deductible** shall mean the amount specified in the Schedule as such.

2.4 **Dishonest or Fraudulent Acts** shall mean dishonest or fraudulent or malicious acts or omissions on the part of an *employee*, who is not a partner or director (whether salaried or non salaried) of the *insured*:

- (a) which were committed or omitted, as the case may be, with the intention of making, and which results with, an improper financial gain for themselves or their accomplices; or
- (b) Which were committed or omitted, as the case may be, in the awareness that such acts or omissions would actually or potentially cause a financial loss to a third party for which loss the *insured* could (should such acts or omissions subsequently be discovered, and result in a third party claim) incur a legal liability to said third party; or
- (c) Which were committed or omitted, as the case may be, with the intent to cause any third party to sustain a loss.

If a series of *claims* shall result from any single Dishonest or Fraudulent Act or Omission (or related series of Dishonest, Fraudulent or Malicious Acts or Omissions) then, irrespective of the total number of *claims*, all such *claims* shall be considered to be a single *claim* for the purposes of the application of the Limits of liability and the *deductible*.

2.5 **Employee** shall mean:

- (a) the *insured's* officers, clerks, servants and other employees while employed by the *insured*, including non-payroll employees who are under the direct supervision and control of the *insured*.



- (b) a director of the *insured* who is employed as a salaried officer or employee whilst acting in the course of their employment by the *insured*;
- (c) a director of the *insured* (other than one who is employed as a salaried officer or employee) but only while performing acts coming within the scope of the usual duties of an employee of the *insured* or while acting as a member of a committee duly elected or appointed by resolution of the board of directors of the *insured* to perform specific, as distinguished from general, directorial acts on behalf of the *insured*;
- (d) Independent members of professional committees performing services for the *insured*;
- (e) all former employees, former directors but only while performing acts coming within the scope of the usual duties of an employee of the *insured*,

2.6 **Insured** shall mean:

- (a) The persons or the partnerships and companies (the latter two entities hereinafter called "the Partnerships and Companies") named in the Schedule herein. *Insured* shall also include any person or persons who may during the *policy period* become or may at any time have been a partner in the Partnerships and Companies; or
- (b) The *principal insured* and any *subsidiary company*; or
- (c) Any director, past, present or who may at any time during the *policy period* become a director, of any of the partnerships, companies or entities noted under (a) or (b) above; or
- (d) The estates &/or the legal representatives of any of the persons, partnerships, company or entities noted under (a) or (b) above in the event of their death, incapacity, insolvency or bankruptcy (as applicable).

2.7 **Insurer** means the AIG Israel Insurance Company Ltd..

2.8 **Policy period** means the period of time from the inception date to the expiry date specified in the Schedule, unless the policy is cancelled in which event the *Policy Period* will end on the effective date of the cancellation.

2.9 **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, mould, 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.

2.10 **Premium** means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.

2.11 **Principal insured** means the first *insured* entity named in the Schedule.

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



2.13 **Securities** shall mean: stock, shares, scrip, transfers, certificates, debentures, bonds, coupons, warrants, bills of exchange, promissory notes, certificates of deposit, title deeds, bearer instruments, or other documents of value or of a negotiable nature.

2.14 **Subsidiary company** means an entity in which the *principal insured* has a *controlling interest* which, was created, acquired or merged with prior to the inception of this policy. *Subsidiary company* shall also mean any company that falls within the above, acquired or created subsequent to the inception of this policy, provided prior written notification thereof has been submitted to the *insurer*, who may at its sole discretion require payment of an additional *premium*, such *premium* being mutually agreed between the *insurer* and the *insured*.

3. Exclusions

The *insurer* shall not be liable to indemnify the *insured* for any *claim*

- 3.1 arising out of, in whole or in part, directly or indirectly or resulting from or by:
1. *war*, any act of *war*, *civil war*, invasion, insurrection, revolution, use of military power or usurpation of government of military power, act of foreign enemy, hostilities, permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority, military rising, rebellion, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege; or
 2. the intentional use of military force to intercept, prevent, or mitigate any known or suspected *terrorist act*; or
 3. any *terrorist acts*.

It is further agreed that the terms *war* and *terrorist acts* are respectively defined as follows:

- (a) *War* shall mean war, whether declared or not, or any warlike activities including use of military force by any sovereign nation to achieve economic, geographic, nationalistic, political, racial, religious or other ends;
- (b) *Terrorist Act(s)* shall mean any actual or threatened use of force or violence directed at or causing damage, injury, harm or disruption, or commission of an act dangerous to human life or property, against any individual, property or government, with the stated or unstated objective of pursuing economic, ethnic, nationalistic, political, racial or religious interests, whether such interests are declared or not. Robberies or other criminal acts, primarily committed for personal gain and acts arising primarily from prior personal relationships between perpetrator(s) and victim(s) shall not be considered *terrorist acts*.

A *terrorist act* shall also include any act which is verified or recognized as such by the Israeli or the United States Governments or any other country where the *claim* was made or where the act took place.

- 3.2 Arising out of, based upon or attributable: (i) to the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of *pollutants*, or (ii) to any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*, or (b) respond to or assess the effects of *Pollutants*;
- 3.3 Arising out of any act or omission of the *insured* which took place prior to the *retroactive date*
- 3.4 Made prior to or pending at the inception of this policy or arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any *insured* to give rise to a *claim*;
- 3.5 Arising out of any legal proceedings instituted within the United States of America or Canada, or arising out of any legal proceedings instituted to enforce a judgement obtained in any court of the United States of America or Canada.



- 3.6 For bodily injury, sickness, disease or death sustained by any person, or any physical damage or destruction of property unless arising from the failure to perform a professional duty or from a negligent or malicious act, error or omission in connection therewith.
- 3.7 Arising out of any dishonest, fraudulent, criminal or malicious act or omission of any director or partner of the *insured*.
- 3.8 For fines, monetary levies, punitive damages, penalties or exemplary damages.
- 3.9 Arising out of the insolvency or bankruptcy of the *insured*.
- 3.10 Arising out of any financial and/or investment advice and/or representation and/or forecast provided by the *insured* or by any director, officer, partner or *employee* on their behalf, in respect of any investment(s) which fail(s) to perform in accordance with the aforementioned advice, representation or forecast, unless proven to be the result of negligence, error or omission.
- 3.11 Caused by or contributed to or arising from loss of value and/or investment originating from fluctuations in the capital markets and at the stock exchange.
- 3.12 Arising out of any transactions carried out for or on behalf of any partner director, associate member or *employee* of the *insured*, as well as institutions or companies where the *insured* has a *controlling interest*.
- 3.13 Arising out of or attributable to any liability assumed or accepted by the *insured* under any contract or agreement, except to the extent such liability would have attached to the *insured* in the absence of such contract or agreement.
- 3.14 For libel or slander made by any partner or *employee* of the *insured* against the *insured* or against any other partner or *employee*.
- 3.15 Arising out of the intentional failure of the *insured* to comply with the provisions of any statute, including any regulations made thereunder, or with any laws, regulations or requirements laid down by any regulatory or supervisory body or agency, whether governmental or otherwise.
- 3.16 For any loss to any person or entity sustained solely in consequence of any direction by any regulatory or supervisory body, whether governmental or otherwise.
- 3.17 For loss in respect of nostro (i.e. funds or *securities* owned by an *insured* entity) &/or portfolios of *employees* directly engaged in the professional services provided by the *insureds*.
- 3.18 Any legal liability arising from or contributed to the *insured* having refused to provide any financing or refused to fulfill any actual or alleged commitment to make any loan or transaction in the nature of a loan or a lease or an extension of credit, whether such commitment was authorized or unauthorized.
- 3.19 for the reimbursement of fees, commissions, costs or other charges paid or payable to the *insured*, or, any third party claim based upon allegations against the *insured* of excessive fees, commissions, costs or other charges.
- 3.20 brought by or on behalf of or at the behest of a shareholder or shareholders of the *insured* in their capacity as such.

4. Extensions

- 4.1 **Investigation, regulatory/administrative/criminal proceedings - up to \$ 250,000 for the policy period**
 - (a) The *insurer* will indemnify the *insured* for *investigation costs* as a result of an *investigation* which first commenced during the *policy period*, and which is related to or may reasonably lead to a *claim* which would otherwise be covered by this policy and is insurable by law. This cover shall apply even



if there is no present demand for indemnity or an intention to hold the *insured* responsible for any damage.

In respect of this clause only, the following definitions will be added to the policy:

- (1) **Investigation** shall mean any formal or official hearing, investigation or inquiry by a regulator, concerning the affairs of an *insured* in their capacity as such, in the performance of or failure to perform professional services, once the *insured* person: (i) is required to attend a hearing, investigation or inquiry or (ii) is identified in writing by an investigating authority as a target of the hearing, investigation or inquiry. An investigation shall be deemed to be first made when the *insured* first becomes so required or so identified. *Investigation* shall not mean routine regulatory supervision, inspection or compliance reviews, or any *investigation*, which focuses on an industry rather than an *insured*.
 - (2) **Investigation costs** shall mean reasonable fees, costs and expenses (except remuneration of any *insured* cost of their time or costs or overheads of any *insured*) incurred with the *insurer's* prior written consent (which shall not be unreasonably withheld) by or on behalf of an *insured*, directly in connection with preparing for and attending an *investigation*. In case such prior approval has not been obtained, the *Insurer* will be liable only for reasonable *Investigation Costs*.
- (b) The *insurer* will indemnify the *insured* for *criminal defence costs*, provided that such costs are incurred in respect of a regulatory, administrative or criminal proceeding which is related to or may reasonably lead to a *claim* which would otherwise be covered by this policy, and is insurable by law. This cover shall apply even if there is no present demand for indemnity or an intention to hold the *insured* responsible for any damage.

In respect of this cover only, the following definition will be added to the policy:

Criminal Defence Costs shall mean reasonable fees, costs and expenses incurred by or on behalf of any *insured* in the criminal defence or appeal of any regulatory, administrative or criminal proceedings against any *insured* that seeks legal remedy, compliance or other sanction.

Provided that the liability of the *insurer* in respect of such costs, in aggregate, shall not exceed 250,000 USD. This sub-limit is part of and not in addition to the total aggregate limit of liability specified in the Schedule and in no way serve to increase the *insurer's* limits of liability as specified therein.

The *insurer* shall advance payment in respect of such costs, subject to the *insured's* undertaking to repay all such advance payments in case of conviction in a criminal proceeding or in case it becomes evident that the *insured* is not entitled to coverage pursuant to the terms of this Policy. .

4.2 **Extended Reporting Period**

Subject to the *insured* not having effected other insurance equivalent to that granted under this Policy, the *insured* shall have the right to purchase from the *insurer* an extended reporting period of 12 months for 100 per cent of the full annual *premium*.

To purchase such an extended reporting period, the *insured* must request its purchase in writing prior to the termination date of the Policy and must tender the additional *premium* due within 30 days of the said termination date. The additional *premium* is not refundable and the extended reporting period is not cancellable. However this condition shall only apply to *claims* first made, in writing, during the extended reporting period that result from an act or omission committed after the *retroactive date* and prior to the date upon which the extended reporting period commenced. This condition shall not operate to extend the Limit of liability for the last Annual Period prior to this condition being invoked; such Limit of liability consequently shall apply to the last Annual Period and the extended reporting period combined. For the purpose of this extension, if the *insurer* cancels the Policy, the last Annual Period of



this Policy, shall be the Annual Period in which the *insurer* cancel the Policy.

The *insured* shall not be entitled to an extended reporting period in case of cancellation of the policy by the *insurer* for the reasons of non-payment of *premium* or cancellation of the policy in accordance with sections 6 (c), 7 (a) or 18 (a) of the Insurance Contract Act, 1981.

5. Conditions

5.1 Notification

- (a) The *insured* shall give written notice to the *insurer* of any *claim* first made against the *insured* or of any circumstances which may subsequently give rise to a *claim* , as soon as practicable and during the *policy period*. All notifications must be made in writing to *Commercial Lines Claims, AIG Israel Insurance Company Ltd., 25 Hasivim St. Kiryat Matalon P.O.B 535, Petach Tikva 4910001 Israel*.
- (b) In case of breach of the *insured's* duty to timely notify the *insurer* of any *claim* in accordance with section 22 of the Insurance Contract Act. 1981, the remedies available to the *insurer* shall be in accordance to sections 24-25 of the Insurance Contract Act, 1981.
- (c) The *insured* shall deliver to the *insurer*, as soon as possible after having been required to do so, such information and documents acquired for ascertaining the *insurer's* liability, and if they are not in his possession, the *insured* shall assist the *insurer* to the best of his ability in obtaining them.

5.2 No Admission, Assistance and Co-operation

- (a) The *insured* shall not make any payment, assume any obligation, make any admission or offer to settle any *claim* for which indemnity is or may be sought under this Policy, without the prior written consent of the *insurer*, who will be entitled at his own expense and at any time, to take over and conduct, in the *insured's* name, but without prejudice to the interest of the *insured*, the defence or settlement of any *claim* against the *insured* notified under this Policy. The *insurer* will act in coordination and cooperation with the *insured* and take reasonable measures not to prejudice the *insured's* reputation or cause him any loss.
- (b) The *insured* shall cooperate with the *insurer*, and upon request shall attend hearings and trials and shall reasonably assist in the conduct of suits and effecting of settlements.

5.3 Material Change

Should there be any material change in the information provided by the *insured* in the proposal form, which formed the basis of this contract, or in the event of any steps being taken in order to revoke the *insured's* licence to operate &/or to have the *insured* declared insolvent, written notice thereof shall be given to the *insurer*, as soon as possible after the *insured* having become aware of such material change or event. In case of breach of the *insured's* duty to notify the *insurer* as specified above, the *insurer* shall be entitled to the reliefs and remedies set forth in sections 18-19 of the Insurance Contract Act, 1981

5.4 Change in Control of the principal insured

If during the *policy period* a *Transaction* (as defined hereunder) takes place with respect to the *principal insured* then the cover provided under this policy is amended to apply only to acts or omissions committed prior to the effective date of the *transaction*. The *principal insured* shall give to the *insurer* written notice of the *transaction* as soon as practicable, but not later than 30 days after the effective date of the *transaction*.

For the purpose of the clause, ***Transaction*** means any one of the following events:

- (a) the *principal insured* and/or any entity which controls outstanding shares representing fifty percent (50 %) or more of the voting power for the election of directors of the *principal insured*, consolidates



with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or

- (b) any person and/or entity, or group of persons and/or entities acting in concert, become entitled to exercise 50% or more of the rights to vote at general meetings of the *principal insured* or control the appointment of directors who are able to exercise a majority of votes at board of directors' meetings of the *principal insured*; or
- (c) The temporary or permanent appointment to the *principal insured* of a liquidator, receiver, administrative receiver, trustee, special manager or similar equivalent official as a result of the insolvency, receivership, bankruptcy or liquidation of the *principal insured* or stay of proceedings against the *principal insured*, as a result of the above.
- (d) The *principal insured* becomes a subsidiary of another entity or becomes controlled by another entity by virtue of any law.

5.5 **Limit of Liability**

The Limits of Liability specified in the Schedule are the aggregate amount of the *insurer's* liability for any *claims* brought against all *insureds* under all covers under this policy in the aggregate. Sub-limits of Liability and Extensions are part of the Limits of Liability. The Limits of Liability for the period provided in the Extended Reporting Period Extension is part of, and not in addition to, the Limits of Liability for the *policy period*. 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.

It is agreed that in case of exhaustion of the Limit of Liability, including for defence costs, then this policy shall cover reasonable defence costs exceeding the Limit of Liability specified in the Schedule, in accordance with article 66 of the Insurance Contract Law, 5741-1981.

To avoid any doubt, coverage under the Extensions detailed in this policy is subject to the Limits of Liability, and shall not apply in excess thereto, unless specifically stated otherwise. In respect of each Extension which covers the *insured's* legal liability, and which is subject to a sublimit of liability, the *insurer* shall indemnify the *insured's* reasonable defence costs even in excess of the sub-limit of liability under the Extension.

In case where the policy specifically applies to jurisdictions other than the State of Israel, then with respect to *claims* filed against the *insured* outside the jurisdiction of the State of Israel, the reasonability of the defence costs exceeding the total aggregate Limits of Liability will be measured based on reasonable defence costs in Israel in accordance with Israeli standards.

5.6 **Deductible**

The *insurer* shall only be liable for the amount arising from a *claim* which is in excess of the *deductible* with regard to all payment under all insurance covers under this policy, including defence costs. All *claims* arising out of one and the same cause shall be considered as one *claim* and one *deductible* shall apply.

5.7 **Jurisdiction, Scope and Governing Law**

Unless otherwise stated in the Schedule, this policy shall apply to any *claim* brought against any *insured* solely in the State of Israel and in accordance with Israeli law. This policy will not cover judgments handed down outside of the State of Israel whether or not such judgments are subsequently deemed enforceable by a competent court within the State of Israel.



Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of the State of Israel and in accordance with the English text as it appears in this policy.

The parties agree to submit to the exclusive jurisdiction of the courts in the State of Israel.

5.8 Cancellation

- (a) This policy may be cancelled by the *principal insured* at any time only by mailing written prior notice to *insurer*. In such case the *insurer* shall be entitled to the *premium* paid for the period before the cancellation became effective, calculated as follows: 10% of the *premium* applicable for the *policy period*, plus 10% for each month or part thereof during which the policy was in force.
- (b) This policy may be cancelled by the *insurer* delivering to the *principal insured* by registered, certified, other first class mail or other reasonable delivery method, at the address of the *principal insured* set forth in the Schedule, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. Proof of mailing or delivery of such notice shall be sufficient proof of notice and this policy shall be deemed cancelled as to all *insureds* at the date and hour specified in such notice. In case of cancellation of the policy by the *insurer* before the expiry of the *policy period*, and the reason for the cancellation is not due to the violation of the policy terms by the *insured* or an attempt to defraud the *insurer* by the *insured*, the *insurer* will return the *insured* the amount which the *insurer* would have charged from a similar *insured* in respect of the same type of insurance on the cancellation date, pro-rata to the remaining period up to the end of the *policy period*.

Any amount not paid by the *insurer* within 28 days will incur interest as stipulated in the section 4(a) of the Adjudication of Interest and Linkage Law, 1961 until the day of actual payment. The reimbursement of the *premium* by the *insurer* shall not be a condition to the validity of the cancellation, However, such payment will be made as soon as applicable.

In case of cancellation due to non-payment of premium, if the *insured* did not pay the premium within 15 days following the *insurer's* written demand, the *insurer* may notify the *insured* in writing that the policy will be cancelled after 21 additional days, unless payment is made within such period

5.9 Premium Payments and other Fees

- (a) Unless otherwise agreed between the parties, the *premium* and other fees due from the *insured* to the *insurer* in connection with the policy will be fully paid within 28 days following commencement of the *policy period*, either in US Dollars, or in NIS calculated according to the representative NIS-US dollar exchange rate at the Bank of Israel on the payment date.
- (b) In case the *premium* has not been paid within the aforementioned 28 days, but rather at other times explicitly agreed upon, any amount in arrears shall bear interest as stipulated in the Adjudication of Interest and Linkage Law, 1961 and linkage differentials in accordance with the changes in the Consumer Price index (hereunder: **CPI**), or in the NIS-US Dollar exchange rate at the Bank of Israel where the *premium* is stated in US Dollars, between the last **CPI** or the NIS-US Dollar exchange rate, published before the day originally set for payment, and the last **CPI** or the NIS-US Dollar exchange rate, published before the date of actual payment.



5.10 Linkage

The *Limit of Liability* of the *Policy*, where specified in US dollars, shall be calculated in accordance with the representative NIS-US dollar exchange rate at the Bank of Israel on the date of actual payment of the *Claim*. The *deductible*, where specified in US dollars shall also be calculated in accordance with the representative NIS-US dollar exchange rate at the Bank of Israel on the date of actual payment of the *deductible*.

The *Limit of Liability* of the *Policy*, where specified in NIS, shall be calculated in accordance with the ratio between the last *CPI* published immediately before the commencement of the *policy period* and the last *CPI* published immediately before the date of payment of the *claim*. The deductible, where specified in NIS, shall also be calculated in accordance with the ratio between the last *CPI* published immediately before the commencement of the *policy period* and the last *CPI* published immediately before the date of payment of the *deductible*.

5.11 Subrogation

If the *insured* has any right for compensation or indemnification against a third party, regarding any loss covered by this policy, not by virtue of an insurance policy, this right will be transferred to the *insurer* once it has paid insurance benefits and to the extent thereof.

The *insurer* may not exercise the right transferred to it under this condition in a manner which will prejudice *insured's* right to recover compensation or indemnification from a third party in excess of the benefits received from the *insurer*.

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. The *insurer* agrees not to exercise any such rights of recovery against any *employee* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the *employee*. The *insurer* may, in writing, waive any of its rights set forth in this Subrogation Clause.

5.12 Notices

Any notice to the *insured* or to the *insurer* shall be given in writing, at their last known address.