



Real Estate Professional Indemnity Insurance

Policy Wording

Aon Risk Services Australia Limited
ABN 17 000 434 720 AFSL No. 241141





1 Insuring Clauses

In consideration of the premium paid or to be paid by the Insured, the Insurer will indemnify the **Insured**, subject to the provisions of this policy.

(a) Professional Liability

The Insurer will indemnify the **Insured** in respect of any **Claim** (including claimant's costs) arising by reason of the **Insured's** civil liability which is first made against the **Insured** and notified to the Insurer during the Period of Insurance and which arises out of the conduct of the **Insured's** Business. Such civil liability includes but is not limited to civil liability:

- (i) for negligence or breach of an express or implied duty to use reasonable care and skill;
- (ii) for breach of the provisions of the Australian Competition and Consumer Act 2010 Act 2010 (Cth), the Fair Trading Act 1987 (NSW) or similar legislation enacted by other States or Territories of the Commonwealth of Australia or the Dominion of New Zealand;
- (iii) for libel or slander of any person or organisation or such person or organisation's products, goods or services;
- (iv) for any unintentional breach of confidentiality, invasion of privacy or disclosure of private information;
- (v) for any unintentional infringement of intellectual property rights, other than rights concerning patent;
- (vi) for any dishonest, fraudulent, malicious or reckless act or omission on the part of any **Insured**, subject to Exclusion 4.h. 'Fraud and Dishonesty' which is deemed to apply only in respect of the alleged perpetrator;
- (vii) which arises out of activities conducted at the direction and on behalf of the **Insured** by any third party including but not limited to any consultant or sub-contractor;
- (viii) in respect of any joint venture in which the Named Insured is a joint- or co-venturer but only to the extent of the Named **Insured's** participation in such joint venture and where the **Claim** is made by a third party who is wholly independent of the joint venture;

and provided always that such **Claim** is based upon acts or omissions committed or alleged to have been committed subsequent to the Retroactive Date stated in the Schedule.

(b) Loss of Documents

The Insurer will indemnify the **Insured** for reasonable and necessary costs of repair, replacement or reconstitution of any Document which has been unintentionally destroyed, damaged, lost or mislaid and which after diligent search cannot be found.

This cover shall apply in the event that the loss of such Document must be such as will imminently give rise to a Claim being made against the **Insured** for damages if nothing further is done to prevent it.

This insuring clause applies where the loss of Documents which have been destroyed, damaged, lost or mislaid is first discovered by the **Insured** and Notified to the Insurer during the Period of Insurance.



(c) **Witness Attendance**

The Insurer will indemnify the **Insured** for the cost of attendance at any court, arbitration or adjudication hearing by the **Insured** in the event that the Insurer or legal advisers acting on behalf of the **Insured** require such attendance, as a witness of fact in connection with a **Claim** made against the **Insured** for which cover is afforded under this policy at the following rates for each day or part thereof on which such attendance is required:

- (i) any principal, partner, member or director of the **Insured** AUD 500.00
- (ii) any Employee AUD 250.00

(d) **Legal Representation Cost**

The Insurer will pay up to an aggregate sub-limit of AUD 100,000 (such sub-limit shall apply as part of and where paid, in whole or in part, erode the Limit of Indemnity) on behalf of the **Insured** all reasonable fees, costs and expenses incurred with the prior written and continuing consent of the Insurer (such consent not to be unreasonably withheld) by the **Insured** during the Period of Insurance for representation at properly constituted hearings, tribunals or proceedings arising directly from the conduct of the **Insured's** Business by the **Insured** which may otherwise be or may otherwise become the subject of indemnity under this policy and which are not indemnified under insuring clause 1.c or 1.e.

No cover is available under this Insuring Clause for any of the **Insured's** own costs and expenses or any value attributable to the time spent by the **Insured** in dealing with such representation.

(e) **Defence Costs and Expenses**

The Insurer will indemnify the **Insured** for all Defence Costs and Expenses in the defence, investigation or settlement of any Claim covered under this policy.

(f) **Fidelity**

The Insurer will indemnify the **Insured** for any loss of money or any other tangible property whatsoever belonging to the **Insured**, or for which the **Insured** is legally liable, up to an aggregate sub-limit of AUD 250,000 (such sub-limit shall apply as part of and where paid, in whole or in part, erode the limit of indemnity) provided such loss is:

- (i) discovered by the **Insured** and Notified to the Insurer during the Period of Insurance; and
- (ii) such loss is in consequence of any dishonest or fraudulent act or omission of an Employee.

The **Insured** must immediately Notify the Insurer of the discovery of:

- a) any loss which gives rise, or may give rise, to a **Claim**;
- b) reasonable cause for suspicion of fraud or dishonesty on the part of any Employee, whether giving rise to a **Claim** or not

and the Insurer shall not be liable for any loss sustained in consequence of any act or omission after the date of such discovery.



In the event of a **Claim** the **Insured** shall give all necessary information and assistance to enable the **Insured** to sue for and obtain reimbursement by the Employee concerned or by his estate of any monies paid or payable by the Insurer. Any monies which but for an Employee's fraud or dishonesty would have been payable to him by the **Insured**, and any monies of the Employee in the hands of the **Insured**, shall be deducted from the amount otherwise payable.

(g) **Franchisors' Cover**

Definition 3.f '**Insured**' is extended to include any franchisor of the **Insured** for any **Claim** made against the franchisor resulting from the conduct of the **Insured's** Business, but only where and to the extent the Named **Insured** would have been liable had the **Claim** been made against the Named **Insured** or where such person is named as a co-defendant with the Named **Insured**.

(h) **General Insurance Distribution**

The Insurer will indemnify the **Insured** in respect of any **Claim** which arises out of its conduct as a distributor of general insurance products in the course of the **Insured's** Business except when acting as an authorised representative of an Australian Financial Services Licensee.

The Insurer shall not have any liability under this extension for **Claims** (including claimant's costs) and/or Defence Costs and Expenses directly or indirectly arising out of, alleged or in any way connected with:

- (i) the **Insured** providing any advice or recommendation in respect of the general insurance products;
- (ii) failure of the **Insured** to disclose any commission, fees or other remuneration paid or to be paid to the **Insured** its capacity as a general insurance distributor.

(i) **Referral Service**

The Insurer will indemnify the **Insured** in respect of any **Claim** which arises out of the the **Insured** providing Referral Services in the course of the **Insured's** Business, except when acting as an authorised representative of an Australian Credit Licensee.

The Insurer shall not have any liability under this Extension for **Claims** (including claimant's costs) and/or Defence Costs and Expenses directly or indirectly arising out of, alleged or in any way connected with:

- (a) any representation made by the **Insured** in relation to the competency of the professional referred, whether express or implied;
- (b) any failure on part of the **Insured** to warn about the competency of the referred professional.

For the purposes of this Extension, Referral Service means the **Insured** providing contact details of another professional to the **Insured's** client or vice versa with the express consent of both parties.



2 Extensions of Cover

Subject to all other provisions of this policy:

(a) Automatic Acquisition Cover

Where the **Insured** creates or acquires a Subsidiary during the Period of Insurance then such Subsidiary shall be treated as being an **Insured** for the purpose of this policy provided that:

- (i) the revenue of the Subsidiary does not exceed 25% of the **Insured's** annual revenue as at the commencement of the Period of Insurance; and
- (ii) there has not been a **Claim** made against the Subsidiary in the previous 5 years of the kind that would have been covered by this policy where such claim has exceeded or is likely to exceed 50% of the retention; and
- (iii) the **Insured** and the Subsidiary are not aware of any circumstances that are likely to give rise to a **Claim** under this policy; and
- (iv) such Subsidiary is not resident or does not conduct the **Insured's** Business in or with third parties in the United States of America.

Outside of the above, cover for a created or acquired Subsidiary will be granted automatically only for a period of 30 calendar days from the date of such creation or acquisition. Any further cover is subject to the mutual agreement of the **Insured** and the Insurer, which may entail an alteration to the provisions of this policy and/or an additional premium.

(b) Contingent Late Notification Extension

This Extension applies where cover for a **Claim** may be refused by the Insurer because of exclusion 4.I and where the Insurer has provided professional indemnity insurance to the **Insured** continuously since the **Insured** was aware, or a reasonable person in the circumstances would have been aware, of the circumstances which might give rise to a **Claim**.

Where the sole reason for such refusal is that the circumstances were innocently not Notified to the Insurer during the period of insurance of the relevant policy, the Insurer will deal with the **Claim** under this policy but entitlement to indemnity shall be determined by the provisions of the policy in force at the time the circumstances should have been Notified. The Insurer retains the right to reduce its liability for the Claim to the extent the Insurer's ability to deal with the **Claim** has been prejudiced by the lack of notification under the earlier policy.

The amount payable as indemnity under this Extension shall be limited to the lesser of the amount of available indemnity remaining under the earlier policy or the amount available as indemnity under this policy. Any payment of indemnity under this Extension shall reduce the Limit of Indemnity applicable to this policy.

This Extension shall only apply where the **Claim** is first made against the **Insured** and Notified to the Insurer during the Period of Insurance.

(c) Automatic Reinstatement

This extension applies where the overall aggregate Limit of Indemnity stated in the Schedule has been exhausted by **Claims**. It does not apply to any aggregated sub-limit. It provides for reinstatement on a direct basis.



Where the aggregate Limit of Indemnity has been exhausted by payments of **Claims**, the aggregate Limit of Indemnity will be automatically reinstated in full.

Provided always that the total amount payable by the Insurer under the Insuring Clauses combined, irrespective of the number of **Claims**, claimants, losses or number of **Insureds** claimed against and irrespective of whether **Claims** wholly or substantially arise from or have any connection with or relate to:

- (i) the same event, occurrence, act, error, omission or breach of duty or originating or underlying cause or
- (ii) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause or
- (iii) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated

shall not exceed the Limit of Indemnity per **Claim** stated in the Schedule.

(d) **Run-off Cover**

Where the Named **Insured** or a Subsidiary ceases to conduct the **Insured** Business during the Period of Insurance and notifies the Insurer before the expiry of the Period of Insurance, this Policy may be extended for a 36 month period from the date the **Insured** Business ceased but only in respect of such **Insured** Business for no additional premium ensuring that:

- a) The **Insured** has no paid **Claims** or reserves;
- b) The **Insured** has continuously held a professional indemnity policy with Catlin Australia Pty Ltd for a minimum of 24 months.

This Extension may be requested by the Named **Insured**, upon the provision of a completed and signed declaration confirming:

- (i) that the **Insured** has not had any registration or membership with any association or governing body related to the **Insured** Business cancelled, withdrawn, revoked or suspended as a result of misconduct during the Period of Insurance;
- (ii) that the **Insured** has not been subject to disciplinary or criminal inquiry, conviction or penalty in relation to the provision of the **Insured** Business during the Period of Insurance;
- (iii) that the **Insured** has not notified any **Claims** or circumstances during the Period of Insurance;
- (iv) that none of the **Insured** are aware of any **Claims** or circumstances that have not been notified to the Insurer.

Cover under this Extension shall apply only to **Claims** arising directly or indirectly out of the **Insured's** Business conducted prior to the date the Named **Insured** or a Subsidiary ceases the **Insured** Business.



(e) **Extended Discovery Period**

In the event that the Insurer has refused to renew the Policy beyond the Period of Insurance, or the Named Insured has not renewed this policy, then this Extension shall provide an Extended Discovery Period for a period of 30 days commencing at the expiry of the Period of Insurance. Cover under this Extended Discovery Period shall only apply to **Claims** first made during the Extended Discovery Period arising directly or indirectly out of the **Insured's** Business conducted prior to the expiry of the Period of Insurance.

(f) **Cyber, Data Protection, Privacy Extension**

The insurer will pay up to an aggregate sublimit of AUD 100,000 (such sub-limit shall form part of the **Limit of Indemnity**) any one claim including costs and expenses or any expenses and in the aggregate for all **Claims** including costs and expenses provided such loss is caused by:

(a) the **Insured's** failure to prevent a person, other than an **Insured**, from unauthorised access to, use of or tampering with **Computer Systems** including:

- (i) Computer **Virus** attacks;
- (ii) Hacking attacks; and
- (iii) Unintentional transmission of a **Virus**;
- (iv) **Electronic Data Theft**

(b) the **Insured's** breach of privacy, confidence or infringement of any right to privacy; and

(c) the **Insured's** breach of any law or regulation that governs the collection, management, confidentiality or disclosure of personal or confidential information of any client of the **Insured**,

which arises from the conduct of the **Professional Services** by the **Insured**.

A retention of \$1,000 inclusive of insured costs and expenses applies to all amounts payable under this extension.

(g) **Retention Waiver**

In the event that a Claim is made against the **Insured** that arises out of residential or commercial property management, it is agreed that the retention will be waived provided that the **Insured** has satisfied Clause 7(l) of this policy.



(h) **Employment Practices Liability Extension**

This policy shall extend to include any **Claim** made against the **Insured** for an **Employment Practices Wrongful Act** up to an aggregate sub-limit of **AUD 500,000 inclusive of insured costs** (such sub-limit shall apply as part of and where paid, in whole or in part, erode the limit of indemnity)

The **Insurer** is not liable for any **Claim** under this Extension based on, arising out of, related to, or attributable to:

- (i) any amount paid by the Insured which the insured is absolved from payment by reason of any covenant, agreement or court order;
- (ii) the future salary or benefits of a claimant who has been or shall be hired, promoted, or reinstated to employment; or
- (iii) damages, compensation, or sums:
 - a) which are severance payments and/or redundancy payments;
 - b) which are payable in respect of a notice period;
 - c) which are determined to be owing under a written contract of employment;
 - d) which are determined to be owing under an express written obligation to make payments in the event of the termination of employment;
 - e) which are workers' compensation payment, statutory entitlements; and
 - f) which are occupational workplace health and safety fines.
- (iv) any **Employment Practices Wrongful Act** committed or alleged to have been committed after:
 - a) the **Insured** is placed in bankruptcy; or
 - b) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, administrator or trustee; or other person administering a compromise or scheme or arrangement between the **Insured** and any other person is appointed to the **Insured**; or
 - c) another entity that acquires or assumes management control of or acquires an interest in the **Insured** which is greater than fifty percent;
- v) industrial action including but not limited to lockouts, strikes, picket lines, stand downs, bans, or limitations resulting from industrial disputes or negotiations;

A retention of \$10,000 inclusive of insured costs and expenses applies to all amounts payable under this extension.

3 Definitions

- (a) "**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.



- (b) "**Claim**" means any demand made of or assertion of a right against the Insured which is communicated to the Insured in writing, including but not limited to any demand for mediation, arbitration or other alternative dispute resolution or costs under insuring clause 1.b.
- (c) "**Defence Costs and Expenses**" means reasonable fees, costs and expenses incurred with the prior written and continuing consent of the Insurer (such consent not to be unreasonably withheld). It does not include any of the Insured's own costs and expenses or any value attributable to the time spent by the Insured in dealing with a Claim.
- (d) "**Document**" means all and any records arising from the Insured's Business, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the Insured is legally responsible, whilst in the custody of the Insured or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the Insured in the ordinary course of the Insured's Business.
- (e) "**Employee**" means any natural person other than a partner, principal, director or member of the Insured who is or has been under a contract of service or apprenticeship with, hired by or seconded to the Named Insured or a Subsidiary or under any work experience or similar scheme, whilst employed or engaged by and under the control of the Named Insured or a Subsidiary in connection with the Insured's Business.
- (f) "**Insured**" means:
- (i) the Named Insured stated in the Schedule and any Subsidiary as at the commencement of the Period of Insurance and any of their predecessors in business;
 - (ii) their principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death;
 - (iii) any Employee; and
 - (iv) any sole trader whom the Insured has agreed in writing to grant indemnity to of the kind provided by this policy prior to the happening of the event giving rise to liability,
- but only where and to the extent the Named Insured would have been liable had the Claim been made against the Named Insured or where such person is named as a co-defendant with the Named Insured.
- (g) "**Insured's Business**" means the professional services performed or the advice given by the Insured in relation to those activities as described in the Schedule
- (h) "**Named Insured**" means the person, firm, company or limited liability partnership named in the Schedule.
- (i) "**Notified**" or "**Notify**" means that notice is sent in writing by the Insured stated in the Schedule and received by the Insurer. Notice is not valid if given by any other person or entity.
- (j) "**Period of Insurance**" means the period stated in the Schedule.
- (k) "**Subsidiary**" means a company in respect of which the Named Insured:



- (i) owned or owns directly or through one or more other subsidiaries more than 50% of the voting rights or more than 50% of the share capital issued; or
- (ii) had or has the right to appoint or remove the majority of the board of directors; or
- (iii) controlled or controls alone pursuant to a written agreement with other shareholders or members the majority of the voting rights, provided that the Insured is also a shareholder in it.

But only to the extent of the Subsidiary's conduct of the Insured's Business while a Subsidiary of the Named Insured.

- (l) **"Electronic Data"** means the unauthorised taking or misuse of information by a person (other than an insured), which information is:
 - i) In electronic form;
 - ii) Intended to interact with a Computer System; and
 - iii) Stored in a Computer System maintained by an Insured to reasonable security standards and back up procedures.
- (m) **"Computer Systems"** means electronic, wireless, web or similar system (including all hardware, firmware and software) used to process data or information, including computer programmes, electronic data, operating systems, networking equipment, servers, web sites, and all input, output, processing, storage and online or offline media.
- (n) **"Virus"** means a set of instructions written in a computer language that tells a computer how to process data or interact with ancillary equipment that are secretly introduced without your permission or knowledge including but not limited to malware, worms, Trojans, rootkits, spyware, dishonest adware, crimeware and other malicious unwanted software.
- (o) **"Employment Practices Wrongful Act"** means any actual or alleged violation of employment law or regulation or any other legal provision relating to the past, present, or future employment of an employee with the Insured.

4 Exclusions

The Insurer shall not have any liability under this policy for **Claims**, costs, expenses or civil liability directly or indirectly arising out of, alleging or in any way connected with:-

- (a) **Act of Terrorism**
 - (i) any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
 - (ii) any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism;
- (b) **Asbestos**

asbestos or any materials containing asbestos in whatever form or quantity;



(c) **Contractual Liability**

- (i) breach of any contractual obligation which imposes a greater obligation upon the **Insured** than would be implied by common law or statute; or
- (i) that part of any **Claim** where rights of recovery against a third party have been restricted by the **Insured**, but only to the extent of any prejudice as a result of such restriction;

(d) **Death or Bodily Injury**

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person; unless caused by negligence or breach of an express or implied duty to use reasonable care and skill in the conduct of the **Insured** Business

(e) **Documents**

repair, replacement or reconstitution cost of any Document, directly or indirectly occasioned by any government or public or local authority action or order or resulting from wear or tear, the action of vermin, gradual deterioration or magnetic flux or loss of magnetism (except where caused by lightning);

(f) **Director and Officer**

any liability any **Insured** has as a director, officer and/or trustee;

(g) **Fines and Penalties**

any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages;

(h) **Fraud and Dishonesty**

any dishonest, fraudulent, malicious or reckless act or omission;

- (i) of any former or present partner, principal, or director of the **Insured**; or
- (ii) that has been condoned by any former or present partner, principal or director of the **Insured**; or
- (iii) of any **Employee** that occurs after the discovery by any former or present partner, principal or director of the Insured of reasonable cause for suspicion of such conduct by the **Employee**.

Further, the Insurer shall not have any liability to indemnify any person committing the dishonest, fraudulent, malicious or reckless act or omission.

This exclusion only applies where such act or omission has been established by judgment or other final adjudication;

(i) **Insolvency**



the insolvency or bankruptcy of the **Insured**;

(j) **Jurisdiction**

any **Claim**, judgment, award or settlement made within countries outside the Jurisdictional Limits stated in the Schedule or any order made anywhere in the world to enforce such a judgment, award, settlement or proceedings either in whole or in part;

(k) **Known Claim or Circumstance**

any **Claim** or circumstance which, prior to the Period of Insurance, the **Insured** was aware, or a reasonable person in the circumstances would have been aware, might give rise to a **Claim**.

(l) **Land and Vehicles**

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer or other means of transport or any buildings, structures, premises or land or any property (mobile or immobile). However, this exclusion does not apply to insuring clause 1.b;

(m) **Liability to Employees**

any breach of any obligation owed by the **Insured** as an employer to any Employee or applicant for employment or any compensation arising under the Workers' Compensation Act, other legislation relating to workers' compensation or similar legislation anywhere in the world, or any other compensation in respect of employer's liability for employment-related personal injury;

(n) **Market Fluctuation**

- (i) depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets unless the **Claim**, costs, expenses or civil liability arises from negligence or breach of any express or implied duty to use reasonable care and skill;
- (ii) any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments;
- (iii) investment advice given or services performed which have not been authorised where authorisation is required under any statutory regulation by an appropriate statutory authority;

(o) **Nuclear and War**

- (i) war (whether declared or not), invasion, acts of a foreign enemy, hostilities or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (ii) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (i) discharge, explosion or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion) or chemical, biological, radioactive or similar agents by any party at any time for any reason;

(p) **Patent Infringement**



infringement of patent;

(q) **Pollution and Contamination**

pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contamination including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

(r) **Product Liability**

any goods sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured**;

(s) **Property Damage**

damage to or destruction or loss of any property (except as provided under insuring clause 1.b) including loss of use; unless caused by negligence or breach of an express or implied duty to use reasonable care and skill in the conduct of the **Insured** Business;

(t) **Radioactive Contamination and Explosive Nuclear Assembly**

ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(u) **Related Companies**

any circumstance concerning or **Claim** brought by or on behalf of the **Insured** or any person having a financial, executive or controlling interest in the **Insured** (unless the financial interest is less than 15%, or the **Claim** made against the **Insured** is for an indemnity or contribution and is in respect of a **Claim** made by an independent third party, or where the **Claim** is covered by Insuring Clause 1.g), or by or on behalf of any entity controlled or managed by the **Insured** or where the **Insured** has greater than a 15% financial interest in the claimant or where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred;

(v) **Toxic Mould**

the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or

any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or

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, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;

(w) **Trading Losses**



trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf the **Insured**.

(x) **Valuation**

any valuation or surveying activities by or on behalf of the **Insured**.

(y) **Co-mingling of Funds**

the failure of the **Insured** to keep clients' funds in properly designated clients' accounts completely separate from the **Insured's** own funds or other clients funds; or

the failure of the Insured to collect, pay, safeguard or account for client funds

(z) **Conflict of Interest Exclusion**

The Insurer will not be liable to indemnify the Insured for any Loss, settlement or other payment, or pay any Defence Costs or Inquiry Costs, directly or indirectly arising out of, based upon, attributable to, or in consequence of:

- (i) any service provided, or allegedly provided, by the Insured or any Agent to; or
- (ii) any transaction effected, or allegedly effected by the Insured or any Agent for, or on behalf

any client of the Insured for which any Insured or any Agent was, or may have been, entitled to any commission, fee or other incentive payment or benefit from a third party.

However, this exclusion shall not apply where, prior to providing or effecting the subject services and/ or transaction, the Insured (and/ or any applicable Agent) clearly disclosed in writing (in a manner and/ or form compliant with any applicable legislative or regulatory requirements) to each applicable client the existence and nature of any such entitlement including, but not limited to, the maximum potential quantum of any such commission, fee or other incentive payment or benefit.

- (iii) The Insurer will not be liable to indemnify the Insured for any Loss, settlement or other payment, or pay any Defence Costs or Inquiry Costs, directly or indirectly arising out of, based upon, attributable to, or in consequence of any transaction or contract in respect of which the Insured or any Agent acted for, or on behalf of, more than one party to such transaction or contract.

However, this exclusion shall not apply where prior to providing or effecting the subject services and/ or transaction, the Insured (and/ or any applicable Agent) obtained from each applicable party a written, signed and dated acknowledgement, that the Insured or Agent (as applicable) may also be involved with another party or parties whose interests may differ from those of the subject party.

(aa) **Professional Fees Exclusion**

The return, refund or disgorgement or any professional fees, charges, commissions or other remuneration or whatsoever nature received by, paid or payable to the Insured in connection with the Professional Services.



5 Limit of Indemnity

- (a) The Limit of Indemnity stated in Schedule is the maximum amount the Insurer shall be called upon to pay under the insuring clauses for each and every claim and in the aggregate for all **Claims** combined during the Period of Insurance. This is irrespective of the number of **Claims**, claimants, losses or number of **Insureds** claimed against and irrespective of whether the **Claims** wholly or substantially arise from or have any connection with or relate to:
- (i) the same event, occurrence, act, error, omission or breach of duty or originating or underlying cause or
 - (ii) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause or
 - (iii) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated.
- (b) All payments made by the Insurer in respect of any insuring clause and any endorsement or otherwise shall erode the Limit of Indemnity for all **Claims** in the aggregate under this policy.
- (c) If a payment is required or made in settlement of any **Claim** or circumstance which exceeds the limit of indemnity available under any Insuring clause, the Insurer's liability for defence costs and expenses under these clauses shall be limited to such proportion as the amount of the limit of indemnity available in respect of such **Claim** or circumstance bears to the amount required or paid in settlement and the **Insured** hereby agrees to make any consequent repayment due to the Insurer immediately upon demand, failing which the Insurer will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them under this policy.

6 Retention

- (a) Where the retention stated in the Schedule is described as "inclusive of Defence Costs and Expenses", a separate retention being the first part of each and every **Claim** which is payable by the **Insured** before the Insurer shall have any liability to indemnify under this policy shall apply to each and every **Claim**. It is a condition of this policy that the **Insured** retains the retention uninsured. The retention in respect of each and every **Claim** shall be the amount stated in the Schedule, and shall be applicable to Insuring Clauses 1 a, b, d e, f, g, h, and i combined in the same manner as for the Limit of Indemnity under clause 5.a above.
- (b) Where the retention stated in the Schedule is described as "exclusive of Defence Costs and Expenses", a separate retention being the first part of each and every **Claim** which is payable by the **Insured** before the Insurer shall have any liability to indemnify under this policy shall apply to each and every **Claim**. It is a condition of this policy that the **Insured** retains the retention uninsured. The retention in respect of each and every **Claim** shall be the amount stated in the Schedule, and shall be applicable to Insuring Clauses 1 a, b, d, f, g, h, and i combined in the same manner as for the Limit of Indemnity under clause 5.a above.

7 Conditions

- (a) **Notification**



- (i) The Named **Insured** must Notify the Insurer in writing to the Notification Address stated in the Schedule within thirty working days and in any event no later than expiry of the Period of Insurance, of the receipt of any **Claim**.
- (ii) The Named **Insured** is deemed to act on behalf of all other **Insureds** in relation to matters concerning Notification, Cancellation and Premium Payment. The Named **Insured** shall be the Insurer's primary point of contact for all matters concerning any claim under this policy.

(b) **Duty to Co-operate**

The **Insured** must, upon request by the Insurer, promptly provide to the Insurer full details concerning any **Claim** under this policy and provide such co-operation and assistance as the Insurer and its representatives, legal advisers or agents may reasonably require. The **Insured** (or any person, firm or company acting for or on behalf of the **Insured**) shall ensure that all relevant documents are not destroyed or otherwise disposed of.

(c) **No Admission of Liability**

The **Insured** (or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the Insurer, admit liability for, compromise, settle or make any offer or payment in respect of any claim under this policy.

(d) **Allocation**

Where there are both covered and non-covered portions of a **Claim**, the Insurer shall not be liable to make any payments in respect of damages, settlement, Defence Costs and Expenses or any other amounts for any portion(s) of the **Claim** not covered by this policy. The Insurer and **Insured** shall use best efforts to agree a fair allocation of all amounts incurred, including Defence Costs and Expenses, between covered and non-covered portions of the **Claim**.

(e) **Non-Imputation**

The right to indemnity of any **Insured** under this policy will not be prejudiced by the failure of any other **Insured** to comply with its duty of disclosure or any provisions of this policy provided that the **Insured** requesting indemnity is innocent of and had no prior knowledge of such conduct and once aware of such conduct advises the Insurer in writing as soon as practicable of all relevant facts.

(f) **Discharge of Policy Liability**

The Insurer may in its absolute discretion, at any time, after deduction of such sums as it may already have paid, agreed to pay or be responsible for, tender to the Insured the remaining amount of the Limit of Indemnity available under this policy and thereafter the Insurer will cease to have any further liability under this policy, or tender such lesser amount as a **Claim** can be settled for and thereafter the Insurer will cease to have any further liability in respect of that **Claim**.

(g) **Conduct of Claim**

The Insurer shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim**. The Insurer shall have full discretion in the handling thereof notwithstanding that a dispute may have arisen between the Insurer and the **Insured**. The Insurer, however, shall not



- (i) defend a **Claim** against the wishes of the Insured unless a Senior Counsel to be mutually decided upon by the Insurer and the **Insured** and whose expenses shall be assumed by the Insurer, shall advise that such proceedings can be contested with a likely prospect of success or
- (ii) agree to settle a **Claim** against the wishes of the **Insured** unless a Senior Counsel to be mutually decided upon by the Insurer and the **Insured** and whose expenses shall be assumed by the Insurer, shall advise that such settlement is fair and reasonable.

(h) **Subrogation**

The Insurer shall be subrogated to all the rights of recovery of the **Insured** against any third party in respect of a **Claim** covered under the policy, whether or not any payment has yet been made and whether or not the **Insured** is fully indemnified in respect of the **Claim**. The **Insured** shall, without charge, provide such assistance as the Insurer may reasonably require in any subrogation action and shall at all times protect and preserve any rights of recovery to which the Insurer is or would become or is subrogated under this policy. The **Insured** agrees that at the option of the Insurer, the Insurer may have the conduct of any proceedings to recover monies paid or payable by the Insurer, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses. Provided always that the Insurer shall not exercise any such rights against any Employee unless the loss was caused or contributed to by serious or wilful misconduct of the Employee which shall include fraudulent, dishonest or malicious acts or omissions by the Employee.

(i) **Change in Risk**

Where the **Insured** merges with or consolidates into another entity or any person or entity acquires more than 50% of the **Insured's** issued share capital or another entity has or acquires the rights to vote, designate or select a majority of the board of directors or voting rights of the **Insured**, cover shall continue to the expiry of the Period of Insurance provided such cover shall apply only to Claims arising directly or indirectly out of the **Insured's** Business conducted prior to the effective date of such merger, consolidation or acquisition.

(j) **Cancellation**

The Named **Insured** may cancel this policy at any time by providing written notice of cancellation to the Insurer. The Insurer shall retain a time on risk premium calculated by its short term rates and the balance of premium shall be returned to the Named **Insured**.

The Insurer may cancel this policy in accordance with the Insurance Contracts Act 1984.

(k) **Advancement of Defence Costs**

The Insurer shall, at the request of the Named **Insured**, pay, prior to the final resolution of a **Claim**, Defence Costs and Expenses. However, in the event and to the extent that it is finally determined that the **Insured** is not entitled to such payments under this policy, the payments advanced shall be repaid by or on behalf of the relevant **Insured** to the Insurer upon demand, and failing that the Limit of Indemnity will automatically be reduced by the amount of such advance payments.

(l) **Risk Management**

If you provide property management services for the Extension 2 (g) to apply you must:



1. Use a fully executed and compliant Property Management Agreement setting out your duties and obligations in accordance with the applicable State Legislative requirements (including but not limited to the *Residential Tenancies Act*) in order to limit your legal liability in the event of a claim; and
2. Have a system and process in place in order to adequately document:
 - (i) inspections that are carried out at each property managed by the **Insured** in accordance with the Property Management Agreement and in accordance with the applicable State Legislative requirements (including but not limited to the Residential Tenancies Act); and
 - (ii) All staff training undertaken and completed that is relevant to Property Management and record-keeping skills; and
 - (iii) The use of a software or e-record keeping platform that adequately details Property Management transactions and accounting requirements including inspections and repairs.
 - (iv) The dates and details of all routine inspections; and
 - (v) all communications with Landlords/Principals and Tenants regarding repairs and maintenance requests with particular emphasis on properties that are at risk of becoming uninhabitable or that have the potential to become a dangerous condition; and
 - (vi) requests for repairs and maintenance received from all sources; and
 - (vii) the **Insured's** responses to all repairs and maintenance requests including follow-ups and confirmation of completion; and
 - (viii) Current qualifications and certificates for licensed contractors who undertake repairs and maintenance at properties managed by the **Insured**.
 - (ix) Evidence of adequate public liability insurance covering licensed contractors who undertake repairs and maintenance at properties managed by the **Insured**.

8 Interpretation

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the commencement of the Period of Insurance;
- (b) if any provision or part thereof is found to be invalid or unenforceable the remainder shall continue in full force and effect; and
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy; and
- (d) words used in the singular include the plural and vice versa.



9 Governing Law and Disputes

- (a) This policy shall be governed by and construed in accordance with the law of New South Wales in the Commonwealth of Australia.
- (b) Any dispute or difference arising under or in respect of this policy shall be subject to the exclusive jurisdiction of the courts in the Commonwealth of Australia.



Endorsement

Difference In Conditions Endorsement

In consideration of the premium, the policy is amended as follows;

In the event that this policy is a renewal of an Aon Real Estate Professional Indemnity Insurance policy, it is agreed that the cover afforded by this policy shall be no less than the cover afforded under the expiring policy. In the event that a Claim is not covered under this policy, but would have been covered under the terms and conditions of the expiring policy (but for the Period of Insurance and Limit of Indemnity), it is agreed that the Named Insured may pursue a Claim under this policy and the terms and conditions that shall be applied by this policy shall be the terms and conditions of the expiring policy wording (but for the Period of Insurance and Limit of Indemnity).

All other terms and conditions of the policy remain unaltered.



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Aon is a leading provider of risk management services, insurance and reinsurance broking, financial planning and employee benefit and risk solutions. Aon professionals meet the diverse and varied needs of our clients through our industry knowledge, technical expertise and global resources.

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ABN 17 000 434 720 AFSL No. 241141

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