

**Arthur J. Gallagher Professional Indemnity Insurance Policy  
for Real Estate Agents**

**Important Notice**

Please note that the **Policy** provides insurance on a Claims Made basis. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Period of Insurance** and reported to **Liberty** during the **Period of Insurance**. This **Policy** may contain a retroactive date exclusion by endorsement.

The **Insured** should carefully read all of the **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by the **Policy**. The **Insured** is advised to consult its insurance adviser to ensure a clear understanding of the **Insured's** rights and obligations under the **Policy**.



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In consideration of payment of the **Premium** by the **Insured** and subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, **Liberty** agrees as follows:

### 1. Insuring Clauses

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#### 1.1 Professional Liability

**Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services**.

#### 1.2 Defence Costs

**Liberty** will pay for **Defence Costs** in respect of a **Claim** covered under Insuring Clause 1.1 or under any applicable extension.

If **Defence Costs** are advanced and it is later established that that such **Defence Costs** are not insured under the **Policy** each **Insured** shall repay to **Liberty** all payments of **Defence Costs** incurred on that **Insured's** behalf.

If the **Limit Type** is Inclusive, then the **Defence Costs** form part of the **Limit of Liability**.

If the **Limit Type** is Exclusive, then the **Defence Costs** are payable in addition to the **Limit of Liability**. However, in the event that the total amount of **Defence Costs** required to dispose of any one **Claim** exceeds the **Limit of Liability** available for such **Claim**, **Liberty** will only pay for **Defence Costs** up to an amount equal to the **Limit of Liability**.

If the **Excess Type** is Inclusive, then the **Defence Costs** are subject to the **Excess**.

If the **Excess Type** is Exclusive, then the **Defence Costs** are not subject to the **Excess**.

### 2. Extensions

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Subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, **Liberty** further agrees to extend cover provided under the **Policy** as follows:

#### 2.1 Automatic Run-Off

If during the **Period of Insurance** the **Insured** ceases to provide the **Professional Services** and submits to **Liberty** a satisfactorily completed and signed Run-Off Declaration, then the **Period of Insurance** will be extended for 84 months from the date of such cessation for no additional premium PROVIDED THAT:

- (a) the **Insured** has no paid **Claims** or reserves in excess of \$100,000; and
- (b) the **Insured** has continuously held a professional indemnity policy via Arthur J. Gallagher for a minimum of 3 years.

Should condition (a) or (b) above not be satisfied, **Liberty** will offer to extend the **Period of Insurance** for a period of up to 84 months subject to receipt of the pro-rata premium requested by **Liberty** and acceptance by the **Insured** of any new terms, conditions and exclusions imposed by **Liberty**.

Cover under this Extension shall only be available in respect of **Claims** arising from **Professional Services** provided by the **Insured** prior to the effective date of such cessation.

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### 2.2 Competition & Consumer Act

Notwithstanding Policy Exclusion 3.1 in respect of “Anti-Competitive Practices”, **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from unintentional breaches, in the performance of **Professional Services**, of the Competition & Consumer Act 2010 (Cth) as amended from time to time, or any Fair Trading legislation of any State or Territory of the Commonwealth of Australia.

### 2.3 Continuous Cover

Notwithstanding Policy Exclusion 3.14 in respect of “Prior Matters”, and in the absence of fraudulent misrepresentation or non-disclosure by the **Insured**, **Liberty** agrees to extend indemnity for any **Claim** arising from or attributable to or in consequence of any fact or circumstance which could have been, but which was not, notified under a previous professional indemnity insurance policy (“**Previous Policy**”) PROVIDED THAT:

- (a) if the fact or circumstance had been notified under the **Previous Policy**, the **Insured** would have been entitled to indemnity under that **Previous Policy**;
- (b) other than **Liberty’s** right to refuse indemnity due to:
  - (i) failure to disclose the fact or circumstance to **Liberty** before this policy was entered into;  
or
  - (ii) the application of Exclusion 3.14 (b),  
the **Insured** would be entitled to indemnity under this **Policy**; and
- (c) the **Insured** has continued without interruption to be insured under a professional indemnity insurance policy placed via Arthur J. Gallagher from the time when the fact or circumstance could have been notified under the **Previous Policy** until the time when the **Claim**, fact or circumstance is notified to **Liberty**.

**Liberty’s** liability for the **Claim** shall not exceed the amount of indemnity which would have been available under the **Previous Policy** if the fact or circumstance had been notified under the **Previous Policy** or the available **Limit of Liability** under this **Policy**, whichever is the lesser.

### 2.4 Costs of Official Inquiries

**Liberty** will indemnify the **Insured** for the reasonable costs and expenses (excluding the **Insured’s** regular or overtime wages, salaries, fees, travel and accommodation expenses) incurred by **Liberty**, or the reasonable costs incurred by the **Insured** with **Liberty’s** prior written consent (which shall not be unreasonably withheld), for the **Insured’s** legal representation at any external inquiry or other similar process relating to or connected with the performance of the **Insured’s Professional Services**, which the **Insured** is legally compelled to personally attend PROVIDED THAT:

- (a) **Liberty** shall be entitled to nominate lawyers to represent the **Insured**;
- (b) the notice requiring the **Insured** to attend the inquiry or similar process is first served on the **Insured** during the **Period of Insurance**, and notified to **Liberty** in writing as soon as practicable during the **Period of Insurance**;
- (c) there is no indemnity for legal representation at any inquiry or other similar process happening within the jurisdictional limits or territorial limits of the United States of America or its territories or protectorates; and
- (d) the maximum amount payable by **Liberty** for all claims under this extension is \$250,000.

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### 2.5 Court Appearance Costs

**Liberty** will indemnify the **Insured** for the reasonable costs and expenses, incurred with **Liberty's** prior written consent, which any natural person who is an **Insured** incurs where they are legally compelled to personally attend a civil proceeding as a witness in a **Claim** covered by this policy.

The maximum amount payable by **Liberty** for all claims under this extension is \$500 per day per natural person and \$50,000 in the aggregate.

### 2.6 Cyber, Data Protection, Privacy and Breach of Confidentiality

**Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging:

- (a) a failure by the **Insured** to prevent a person, other than an **Insured**, from unauthorised access to, use of or tampering with **Computer Systems** including:
  - (i) **Electronic Data** theft;
  - (ii) Computer virus attacks;
  - (iii) Hacking attacks; and
  - (iv) Any inadvertent transmission;
- (b) a breach of privacy, confidence or misuse of confidential information by the **Insured**; and
- (c) a breach by the **Insured** of any law or regulation that regulates the collection, management, confidentiality or disclosure of personal or confidential information of any client of the **Insured**.

### 2.7 Deemed Employees

The definition of **Insured** in Definition 6.11 is extended to include any contractor or consultant who is a "deemed worker" under the workers' compensation laws of the State or Territory of the Commonwealth of Australia in which the contractor or consultant is performing **Professional Services** and has a written contract with the **Insured** to perform **Professional Services**, but only in relation to the performance of **Professional Services** for or on behalf of the **Insured**.

### 2.8 Defamation

**Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging any libel, slander, defamation or injurious falsehood by the **Insured**. No cover is provided under this extension for any **Claim** arising from any intentional libel, slander, defamation or injurious falsehood.

### 2.9 Emergency Costs

If, because of an emergency, the written prior consent of **Liberty** cannot be requested for the **Insured** to incur **Defence Costs**, **Liberty** is deemed to consent to those **Defence Costs**, incurred for a period of 31 days following the date on which the **Claim** was first made.

The maximum amount payable by **Liberty** for all **Claims** under this extension is \$100,000.



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### 2.10 Employment Practices Liability

**Liberty** will indemnify the **Insured** for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from an **Employment Wrongful Act**.

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

- (a) any damages, costs, or expenses incurred by the **Insured** for the cost of improving the **Insured's** employment practices or the working conditions at the premises where the **Insured's** business is conducted;
- (b) an **Employment Wrongful Act** committed or alleged to have been committed after:
  - (i) the **Insured** is placed in bankruptcy;
  - (ii) 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
  - (iii) another entity that acquires or assumes management control of or acquires an interest in the **Insured** which is greater than fifty percent;
- (c) an express obligation under a statute, award, certified agreement, workplace agreement or any other agreement which is required by, or filed with any industrial tribunal, including but not limited to obligations in relation to payment of wages, leave entitlement, notice of termination, severance payments and allowances;
- (d) a breach of a term whether express or implied in a contract of employment where that implied term requires the **Insured** to treat **Employees** fairly and in good faith, except to the extent that the **Insured** would have been liable for the breach in absence of the implied term;
- (e) industrial action including but not limited to lockouts, strikes, picket lines, stand downs, bans or limitations resulting from industrial disputes or negotiations; or
- (f) actual or alleged failure to comply with any law relating to:
  - (i) procedural or notification requirements in a case of termination of employment because of redundancy;
  - (ii) workers' compensation;
  - (iii) occupational workplace health and safety; or
  - (iv) contracts alleged to be harsh, unfair, unconscionable or contrary to public interest.

The maximum amount payable by **Liberty** for all **Claims** under this extension is \$500,000.

### 2.11 Fidelity

**Liberty** will indemnify the **Insured** for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes in the **Insured's** care, custody or control which belongs to the **Insured** or for which the **Insured** is legally responsible, which the **Insured** sustains as a result of any dishonest or fraudulent act of any of the **Insured's Employees** and committed in the conduct of the **Insured's Professional Services** PROVIDED THAT:

- (a) there is no indemnity for any person committing or condoning the dishonest or fraudulent act;
- (b) the **Insured** first discovered the loss during the **Period of Insurance**;
- (c) the **Insured** notified **Liberty** in writing within the **Period of Insurance** and within 28 days of having reasonable cause for suspicion of a loss or discovery of a loss;



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- (d) there is no indemnity under this clause for loss sustained by the **Insured** as a result of any act committed after the date on which the **Insured** first discovers, or has reasonable cause for suspicion of, dishonesty or fraud on the part of the **Employee** concerned;
- (e) the **Insured** provides all information and assistance that **Liberty** request in order to recover from the **Employee** or the **Employee's** estate; and
- (f) the **Excess** shall apply for each and every individual dishonest or fraudulent act.

The maximum amount payable by **Liberty** for all **Claims** under this extension is \$100,000.

### 2.12 Franchisor Indemnity

**Liberty** will indemnify any franchisor of the **Insured** for any **Claim** made against the franchisor for its civil liability arising vicariously from the performance of **Professional Services** by the **Insured** PROVIDED THAT there is no indemnity available for any **Claim** between the franchisor and the **Insured** arising from the relevant franchise agreement or for any dispute which does not involve a third party alleging a breach of **Professional Services**.

### 2.13 Fraud & Dishonesty

Notwithstanding Exclusion 3.6 in respect of "Fraud & Dishonesty", **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging fraudulent, criminal, malicious or dishonest conduct by the **Insured** or their **Agent**.

However, no cover is provided under this extension:

- (a) to any person, company or other entity who has committed or condoned the fraudulent, criminal, malicious or dishonest conduct;
- (b) in respect of a **Claim** arising from or in any way connected with loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes; or
- (c) for any loss sustained as a result of any fraudulent, criminal, malicious or dishonest conduct by the **Insured** or their **Agent** occurring after the date on which the **Insured** first discovers, or had reasonable cause for suspicion of fraudulent, criminal, malicious or dishonest conduct on the part of any person.

### 2.14 Intellectual Property Rights

Notwithstanding Exclusion 3.9 in respect of "Intellectual Property Rights", **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging infringement of **Intellectual Property Rights** by the **Insured**.

However, no cover is provided under this extension for any **Claim**:

- (a) resulting from any intentional infringement of **Intellectual Property Rights**; or
- (b) arising out of or in any way connected with:
  - (i) legal or regulatory proceedings brought within the United States of America, Canada or any of their territories or protectorates or in which the laws of those countries are applicable, even if only to a limited extent; or
  - (ii) the enforcement of any judgment, award or regulatory order obtained within or determined pursuant to the laws of the United States of America, Canada or any of their territories or protectorates.

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### 2.15 Joint Ventures

**Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed by the **Insured** in the **Insured's** capacity as a joint venture partner but only to the extent of the **Insured's** own liability as a joint venture partner.

**Liberty** will only pay for **Defence Costs** incurred by the **Insured** in respect of such **Claim** solely in respect of its own liability as a joint venture partner.

### 2.16 Loss of Documents

**Liberty** will pay on behalf of the **Insured** the costs the **Insured** incurs with the prior written consent of **Liberty**, which shall not be unreasonably withheld, for replacing or restoring any **Documents** which are destroyed, damaged or after diligent search cannot be found.

Such destruction, damage or loss must result from the performance of **Professional Services** by the **Insured** and be discovered for the first time during the **Period of Insurance** and reported to **Liberty** during the **Period of Insurance**.

The **Insured** must supply satisfactory documentary proof of their loss, including bills and accounts.

**Liberty** will not pay for any destruction, damage or loss:

- (a) resulting from wear and tear or gradual deterioration; or
- (b) unless the **Documents** were in the **Insured's** physical custody or control or in the physical custody or control of their **Agent** in the ordinary course of the **Insured's Professional Services**.

The maximum amount payable by **Liberty** under this extension is \$500,000.

### 2.17 New Subsidiaries

The definition of **Subsidiary** in Definition 6.20 is extended to include any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, becomes a subsidiary of the **Insured** during the **Period of Insurance** provided that:

- (a) in the case of an acquisition, the revenue of the new subsidiary for the 12 months preceding the date of its acquisition does not exceed 10% of the consolidated revenue of the **Insured** for the 12 months preceding the commencement of the **Period of Insurance**;
- (b) the new subsidiary is not incorporated in the United States of America, Canada or any of their territories or protectorates;
- (c) the new subsidiary does not perform **Professional Services** within the United States of America, Canada or any of their territories or protectorates; and
- (d) the new subsidiary has no paid or incurred professional indemnity claims against it for the 5 years preceding the date of its acquisition.

In respect of any other new subsidiary to which any of (a) to (d) do not apply, **Liberty** will provide cover for a period of 45 days (but not beyond the end of the **Period of Insurance**) from the effective date of the new subsidiary being acquired or created. Upon provision to **Liberty** by the **Insured** of full details of the new subsidiary, **Liberty** will consider providing cover for the new subsidiary for a further period on such terms and conditions and for such additional premium as may be agreed.

Cover in respect of any such new subsidiary applies only in respect of **Professional Services** performed whilst the subsidiary is a subsidiary of the **Insured**.



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### 2.18 Period of Grace

If the **Policy** is neither renewed nor replaced by the **Insured** with a policy or policies providing similar cover then the **Insured** is entitled to an automatic extended policy period of 30 days commencing from the end of the **Period of Insurance** during which time the **Insured** may notify any claim under the **Policy** to **Liberty** provided it results from **Professional Services** performed prior to end of the **Period of Insurance**.

### 2.19 Public Relations Costs

**Liberty** will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by an **Insured** with **Liberty's** prior written consent (which shall not be unreasonably withheld) in seeking advice from a public relations consultant solely for the benefit of protecting the **Insured's** professional reputation as a result of **Professional Services** performed by the **Insured** which have or could reasonably lead to a **Claim** being made against the **Insured**.

The maximum amount payable by **Liberty** under this extension is \$100,000.

### 2.20 Reinstatement

**Liberty** agrees to reinstate the **Limit of Liability** to the extent it has been eroded by the payment of a **Claim** under this **Policy**, PROVIDED THAT:

- (a) **Liberty's** total liability in respect of all **Claims** shall not exceed the **Aggregate Limit of Liability** in the **Schedule**; and
- (b) such reinstatement is only available to subsequent **Claims** totally unrelated to those that give rise to the partial or total erosion of the **Limit of Liability**.

The cover provided under this extension shall not apply to any extensions to which a sub-limit of liability applies if the sub-limit of liability has been eroded by payment of a **Claim** under this **Policy**.

### 2.21 Spouses, Estates & Representatives

**Liberty** will cover:

- (a) in the event of the death, incapacity or bankruptcy of an **Insured**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives; or
- (b) any **Claim** brought against the lawful spouse or domestic partner of an **Insured**, as if the **Claim** had been brought against that **Insured**.

No cover is provided under this extension for any actual or alleged act or omission by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner.

### 2.22 Statutory Liability

Notwithstanding Policy Exclusion 3.13 in respect of "Penalties & Punitive Damages", **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from **Statutory Liability**.

The maximum amount payable by **Liberty** for all **Claims** under this extension is \$250,000.

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### 2.23 Vicarious Liability

**Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed by an **Agent** of the **Insured**.

**Liberty** will not be liable under this extension for the **Agent's** own liability, nor will **Liberty** be prevented from seeking recovery from any **Agent**.

## 3. Exclusions

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**Liberty** will not pay for any amounts insured under the **Policy** for or arising out of:

### 3.1 Anti-Competitive Practices

any contravention of the provisions in Part IV, IVA and IVB of the Competition & Consumer Act 2010 (Cth), Federal Trade Commission Act (USA), Sherman Anti-Trust Act (USA), Clayton Act (USA), all as amended from time to time, or any similar law anywhere in the world regulating monopolisation, anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade or similar activities.

### 3.2 Asbestos

asbestos, asbestos fibres or derivatives of asbestos.

### 3.3 Contractual Liability & Commercial Risks

- (a) a liability which the **Insured** has assumed under a contract, guarantee or warranty unless such liability would have attached in the absence of such contract, guarantee or warranty; or
- (b) any dispute involving fees, charges, commissions or any other form of remuneration.

### 3.4 Employer's Liability

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any actual or deemed employee of the **Insured**.

### 3.5 Financial Advice

any financial or investment advice or services.

### 3.6 Fraud & Dishonesty

any fraudulent, wilful, grossly reckless, malicious, criminal or dishonest conduct including any intentional breach of any law or regulation committed by the **Insured** or their **Agent**.

This exclusion will only apply where it is established by an admission of such **Insured** or their **Agent** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

### 3.7 Goods & Services Tax

**GST** imposed or payable in respect of the **Premium** or any payment of insured amounts made under the **Policy**.

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### **3.8 Insurance Intermediaries**

the provision of insurance services as an agent, broker or authorised representative of an AFSL licensee.

### **3.9 Intellectual Property Rights**

any actual, potential or alleged infringement of **Intellectual Property Rights**.

### **3.10 Investment Performance Guarantee**

any guarantee or warranty given by or on behalf of the **Insured** in relation to the performance of any investment.

### **3.11 Management Liability**

the **Insured** acting in the capacity of a director or officer.

### **3.12 Owners & Occupiers Liability**

the ownership or occupation of real property by the **Insured**.

### **3.13 Penalties & Punitive Damages**

- (a) any fines or other penalties; or
- (b) any exemplary, aggravated, multiple or punitive damages.

### **3.14 Prior Matters**

or in any way connected with:

- (a) any written demand or legal proceedings for compensation or official inquiry made, threatened, intimidated against or involving the **Insured** prior to the commencement of the **Period of Insurance**;
- (b) any facts that, before the commencement of the **Period of Insurance**, the **Insured** was aware, or a reasonable person would have been aware, might give rise to a claim under the **Policy**;
- (c) any facts that might give rise to a claim under the **Policy** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Period of Insurance**;
- (d) any facts that might give rise to a claim under the **Policy** which have been disclosed to any insurer in any proposal for insurance before the commencement of the **Period of Insurance**;  
or
- (e) any facts that might give rise to a claim under the **Policy** which were disclosed to **Liberty** in the proposal.

### **3.15 Property Development and Construction Management**

property development, project or construction management.

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### 3.16 Related Parties

any **Claim** made by or on behalf of:

- (a) one or more **Insured** against another **Insured** other than a **Claim** for contribution or indemnity which results directly from another **Claim** which would be covered under the **Policy** if made directly against such other **Insured**;
- (b) a child, sibling, spouse, partner or parent of an **Insured** or a parent of a spouse or partner of an **Insured**;
- (c) any entity which is owned, controlled or managed by any **Insured**; or
- (d) any parent company or other entity which owns, controls or manages any **Insured**.

### 3.17 Retroactive Date

any **Professional Services** performed prior to the **Retroactive Date**, unless specified as "Unlimited" in the Schedule, in which case this exclusion shall not apply.

### 3.18 Sanctions Affected Insureds

any **Claim** brought or maintained against any **Insured** that is subject to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America or Bermuda.

### 3.19 Uninsurable Amounts

amounts uninsurable at law.

### 3.20 Valuation Services

any estimate or valuation of any tangible or intangible property made by or on behalf of the **Insured**.

This Exclusion does not apply to a statement made by the **Insured** in accordance with the Property, Stock and Business Agents Act 2002 Division 3 or similar legislation providing evidence of the reasonableness of any estimate of the selling price of a property.

### 3.21 War, Terrorism & Nuclear

- (a) war (whether declared or not), civil disturbance or riot;
- (b) any actual or threatened act of terrorism or any action taken to, or taken in an attempt to, control, prevent or suppress any act of terrorism;
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or any waste from the combustion of nuclear fuel; or
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear weapon, installation, reactor or other nuclear assembly or nuclear component thereof.

### 3.22 Watercraft, Aircraft & Motor Vehicles

the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.

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In addition,

### 3.23 Territorial & Jurisdiction

It is hereby understood and agreed that **Liberty** will not pay for any amounts insured under the **Policy** for, arising out of, or in any way connected with:

- (a) any act, error or omission committed or alleged to have been committed within the United States of America or any of its territories or protectorates;
- (b) any legal proceedings brought within the United States of America or any of its territories or protectorates;
- (c) the enforcement of any judgment or award obtained within, or determined pursuant to the laws of, the United States of America or any of its territories or protectorates; or
- (d) any legal proceedings in which the laws of the United States of America or any of its territories or protectorates are applicable even if only to a limited extent.

## 4. Claims Conditions

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### 4.1 Notification of Claims & Co-operation

As soon as the **Insured** becomes aware of a **Claim** or inquiry during the **Period of Insurance** the **Insured** must:

- (a) notify **Liberty** in writing of the **Claim** or inquiry. The notification must be sent to:  
The Claims Department  
Liberty International Underwriters  
Level 27, 'Gateway'  
1 Macquarie Place  
Sydney, New South Wales, Australia 2000  
Tel: +61-2-8298 5800  
Fax: +61-2-8298 5886  
Email: spcauclaims@libertyiu.com
- (b) give **Liberty** such information and co-operation as it may reasonably require including but not limited to:
  - (i) a description of the **Claim** or inquiry;
  - (ii) the nature of the allegation;
  - (iii) the nature of the alleged or potential loss;
  - (iv) the names of actual or potential claimants; and
  - (v) the manner in which the **Insured** first became aware of the **Claim** or inquiry.

If any amounts insured under the **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** within a reasonable time of making a claim under the **Policy** and provide **Liberty** with details of the other insurance.

### 4.2 Defence & Settlement

**Liberty** may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.

The **Insured** must:

- (a) take all reasonable steps to mitigate loss;

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- (b) not agree to any waiver, limitation or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty** which shall not be unreasonably withheld; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
  - (i) the cause and consequences of any **Claim**;
  - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
  - (iii) whether **Liberty** has any liability to the **Insured** under the **Policy** and, if so, the extent of its liability,and, where applicable, conducting the defence of any **Claim**.

### 4.3 Allocation

In the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by the **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of amounts insured under the **Policy** which relate solely to what is covered under the **Policy**.

In the event that an agreement cannot be reached **Senior Counsel** shall determine, as an expert but not an arbitrator, a fair and proper allocation. Until **Senior Counsel** has made his or her determination, **Liberty** may, in its absolute discretion, pay such amount insured under the **Policy** as it considers appropriate.

### 4.4 Requirement to Contest a Claim

**Liberty** shall not require the **Insured** to contest any **Claim** unless **Senior Counsel** advises that such **Claim** should be contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter (including potential amounts insured under the **Policy**) and the prospects of the **Insured** successfully defending the **Claim**.

In the event that **Senior Counsel** recommends settlement in respect of a **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Liberty** shall not exceed the amount for which the **Claim** could have been settled plus **Defence Costs** incurred with **Liberty's** prior written consent up to the date of such election.

## 5. General Conditions

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### 5.1 Change in Control

If a **Change in Control** occurs during the **Period of Insurance**, the **Policy** will continue to provide cover but only in respect of civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed prior to the effective date of the **Change in Control**.

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### 5.2 Limit of Liability

Where the **Limit of Liability** is specified to be inclusive of **Defence Costs**, the maximum amount payable by **Liberty** under the **Policy** is the **Limit of Liability**. The **Limit of Liability** is inclusive of sub-limits of liability and any other amounts insured under the **Policy**.

Where the **Limit of Liability** is specified to be exclusive of **Defence Costs**, the maximum amount payable by **Liberty** under the **Policy** is the combined total of the **Limit of Liability** and the **Defence Costs** payable in accordance with Insuring Clause 1.2. The **Limit of Liability** is inclusive of sub-limits of liability and any other amounts insured under the **Policy**.

### 5.3 Electronic Communications General Condition

It is hereby understood and agreed that **Liberty** may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act 1984 (Cth) or otherwise.

### 5.4 Excess

Where the **Excess Type** is specified to be inclusive of **Defence Costs**, **Liberty** will only pay in respect of a **Claim** and associated **Defence Costs** and other amounts insured under the **Policy**, the amount which is above the **Excess**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

Where the **Excess Type** is specified to be exclusive of **Defence Costs**, **Liberty** will only pay in respect of a **Claim** and other amounts insured under the **Policy**, the amount which is above the **Excess**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

### 5.5 Liberty Mutual AGM General Condition

Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (LMIC), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. (LMHC), a Massachusetts USA mutual holding company. Notice is hereby given that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA.

This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com), by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

### 5.6 Cancellation

The **Insured** may cancel this policy at any time by notifying **Liberty** in writing. If there are no **Claims** or circumstances that might give rise to a **Claim** which have been notified to **Liberty**, **Liberty** will provide a pro-rata refund of premium for the unexpired **Period of Insurance**. The refund of premium will never be greater than 75%.

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### 5.7 Subrogation

If **Liberty** grants indemnity under the **Policy**, then **Liberty** shall be subrogated to the **Insured's** rights of recovery against any person or entity whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything (including but not limited to excluding or limiting the liability of other parties in contracts, whether or not they are written contracts) that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party.

Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** (including **Defence Costs**) shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

### 5.8 Severability of Proposal

Failure by any **Insured** to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any **Insured** to **Liberty** shall not prejudice the right of any other **Insured** to cover under the **Policy**. Cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such failure or misrepresentation.

### 5.9 Non-Imputation

For the purposes of determining the availability of cover under the **Policy** the conduct of one **Insured** shall not be imputed to any other **Insured**, provided that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such conduct.

### 5.10 Governing Law & Exclusive Jurisdiction

The **Policy** is governed by the law in force in the State or Territory of the Commonwealth of Australia in which the **Policy** is issued. All matters arising from or relating to the construction or operation of the provisions of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

### 5.11 Policy Interpretation & Construction

The headings in the **Policy** are for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** and Section 6 - Definitions.

## 6. Definitions

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In the **Policy**:

- 6.1 Agent** means a natural person, company or other entity who has or had a written contract with the **Insured** to perform **Professional Services**, but only in relation to the performance of **Professional Services** for or on behalf of the **Insured**.

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**6.2 Change in Control** means any one of the following events:

- (a) the **Insured** consolidates or merges with, or sells all or substantially all of its assets to a person, entity or group of persons or entities acting in concert;
- (b) the **Insured** becomes a subsidiary of another entity or becomes controlled by another entity; or
- (c) a trustee, administrator, receiver or liquidator including any provisional liquidator is appointed to the **Insured**.

**6.3 Claim** means:

- (a) any written demand or legal proceedings for compensation first made or brought against the **Insured** during the **Period of Insurance**, and reported to **Liberty** during the **Period of Insurance**, which may result in the payment of any amounts insured under the **Policy**; or
- (b) the making by the **Insured** of a claim against **Liberty** under Extensions 2.4 in respect of "Costs of Official Inquiries", 2.5 in respect of "Court Appearance Costs", 2.9 in respect of "Emergency Costs", 2.11 in respect of "Fidelity", 2.16 in respect of "Loss of Documents" or 2.19 in respect of "Public Relations Costs".

All **Claims** attributable to one source or originating cause shall be deemed to be a single **Claim** and one **Excess** shall apply.

**6.4 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.

**6.5 Defence Costs** means:

- (a) reasonable and necessary costs and expenses incurred by **Liberty**, or by the **Insured** but only with **Liberty's** prior written consent which shall not be unreasonably withheld, solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any **Claim** covered under the **Policy**; and
- (b) the costs of obtaining **Senior Counsel's** advice or determination under the **Policy** pursuant to Claims Condition 4.3 in respect of "Allocation" and 4.4 "Requirement to Contest a Claim".

**Defence Costs** does not include salaries, wages, allowances, travel or accommodation expenses incurred by the **Insured** in assessing, investigating, dealing with and assisting others to deal with any **Claim**.

**6.6 Document** means a document of any nature whether written, printed or reproduced by any method, including computer records or electronic data material, but does not include money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

**6.7 Electronic Data** means the unauthorised taking or misuse of information by a person (other than an **Insured**), which information is:

- (a) in electronic form;
- (b) intended to interact with a **Computer System**; and
- (c) stored in a **Computer System** maintained by an **Insured** to reasonable security standards and back up procedures.

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- 6.8 Employee** means any person employed under a contract of service or apprenticeship but shall not mean a consultant, contractor or agent.
- 6.9 Employment 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 individual with the **Insured**.
- 6.10 GST** means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty or interest payable in respect of that tax.
- 6.11 Insured** means each of the following:
- (a) the **Insured** named in the **Schedule** and its **Subsidiaries**; and
  - (b) any past, present or future principal, director, partner or **Employee** of the **Insured** or its **Subsidiaries** but only in relation to **Professional Services** performed for or on behalf of the **Insured** or its **Subsidiaries** whilst they are a principal, director, partner or **Employee** of the **Insured** or its **Subsidiaries**.
- 6.12 Intellectual Property Rights** means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trade marks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.
- 6.13 Liberty** means Liberty International Underwriters which is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A. (The liability of members is limited).
- 6.14 Policy** means this policy wording, any endorsements to it and the **Schedule**.
- 6.15 Period of Insurance** means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Period of Insurance** will end on the effective date of the cancellation.
- 6.16 Premium** means the amount payable by the **Insured** named in the **Schedule**, for the **Policy** including any applicable charges advised by **Liberty**.
- 6.17 Professional Services** means:
- (a) Real estate agency sales;
  - (b) Rent collection;
  - (c) Real estate agency property management;
  - (d) Auctioneer;
  - (e) Body corporate / strata management;
  - (f) Facilities management;

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- (g) Land settlement agency and broker;
- (h) Stock and station agency;
- (i) Buyers agency;
- (j) Holiday booking agency;
- (k) Business broking;
- (l) Professionals referral; and
- (m) General insurance product distribution.

**6.18 Schedule** means the schedule attached to the **Policy** and signed by a person authorised by **Liberty**.

**6.19 Senior Counsel** means a Senior Counsel to be mutually agreed upon by **Liberty** and the **Insured** or, in the absence of agreement, to be appointed by the current President of the Law Society in the State or Territory in which the **Policy** is issued.

**6.20 Subsidiary** means

- (a) any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, was or is a subsidiary of the **Insured** named in the **Schedule** prior to or at the commencement of the **Period of Insurance**; or
- (b) any entity over which the **Insured** prior to or at the commencement of the **Period of Insurance** directly or indirectly exercises effective controls of management, including of any joint venture.

Cover in respect of any such company applies only in respect of **Professional Services** performed whilst the company was or is a **Subsidiary** of the **Insured** named in the **Schedule**.

**6.21 Statutory Liability** means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- (a) an **Insured** for any civil offence;
- (b) an **Insured** for a strict liability offence in connection with the discharge, disbursal, release or escape of pollutants; or
- (c) an **Insured** for a strict liability offence in connection with a breach of occupational health and safety law or regulation,

but solely resulting from the conduct by the **Insured** of its **Professional Services** and only if **Liberty** are not legally prohibited from paying the pecuniary penalties.