



Procover Management Liability
Insurance Policy Wording

17 September 2018

Procover Management Liability Insurance Policy Wording

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IMPORTANT INFORMATION

Please read the following information.

For the purposes of the Important Information section all references to:

- 'you' or 'your' has the same meaning as the 'Insured' as defined in Section 5 - Definitions of the Policy.
- 'we', 'us', 'our' or the 'Insurer' has the same meaning as defined in Section 5 - Definitions of the Policy.

ABOUT LLOYD'S

Lloyd's underwriters are authorised by the Australian Prudential Regulation Authority ('APRA') under the provisions of the *Insurance Act 1973* (Cth) to conduct insurance business in Australia.

Lloyd's syndicates have approximately \$1 billion placed in trust in Australia, purely to act as an additional layer of security to pay claims. Lloyd's is recognised by two leading independent international rating agencies, Standard & Poor's and AM Best who rate Lloyd's "A+" (Strong) and "A" (Excellent).

GENERAL INSURANCE CODE OF PRACTICE

We proudly support the General Insurance Code of Practice ('the Code'). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

For further information on the Code, please visit www.codeofpractice.com.au

ABOUT PROCOVER

Procover Underwriting Agency Pty Ltd (ABN 46 165 322 592, AR No. 453410) ('Procover') is an Authorised Representative of Miramar Underwriting Agency Pty Ltd (ABN 97 111 534 797, AFSL 314176) and acts under a binding authority given to it by us, to administer and issue policies, alterations and renewals. In all aspects of arranging this Policy, Procover acts as an agent for the Insurer and not for you.

You can contact Procover by:

Street address: Level 5, 97-99 Bathurst Street, Sydney NSW 2000

Postal address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6600

Fax: +61 2 9307 6699

Procover is a company within the Steadfast Underwriting Agencies division of Steadfast Group Limited (ABN 98 073 659 677).

OUR CONTRACT WITH YOU

This Policy is a contract of insurance between you and us and contains all the details of the cover that we provide. The Policy consists of:

- this Policy wording which tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the Proposal, which is the information you provide to us when applying for insurance cover;
- your most current Schedule issued by us. The Schedule is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the Policy;
- any endorsement;
- any other document we tell you forms part of the Policy which may vary or modify the above documents.

These documents should be read together as they jointly form the contract of insurance between you and us.

YOUR DUTY OF DISCLOSURE

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

PRIVACY STATEMENT

In this Privacy Statement the use of 'we', 'us' and 'our' means the Insurer and Procover unless specified otherwise.

We are committed to protecting your privacy. We are bound by the obligations of the *Privacy Act 1988* (Cth). This sets out basic standards relating to the collection, use, storage and disclosure of personal information.

We need to collect, use and disclose your personal information (which may include sensitive information) in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim. You can choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

The primary purpose for our collection and use of your personal information is to enable us to provide insurance services to you.

Personal information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from your insurance intermediary or co-insureds). If you provide personal information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us;
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

We may disclose the personal information we collect to third parties who assist us in providing the above services, such as related entities, distributors, agents, insurers, reinsurers and service providers. Some of these third parties may be located outside of Australia. In all instances where personal information may be disclosed to third parties who may be located overseas, we will take reasonable measures to ensure that the overseas recipient holds and uses your personal information in accordance with the consent provided by you and in accordance with our obligations under the *Privacy Act 1988* (Cth).

In dealing with us, you consent to us using and disclosing your personal information as set out in this Privacy Statement. This consent remains valid unless you alter or revoke it by giving written notice to Procover's Privacy Officer. However, should you choose to withdraw your consent, we may not be able to provide insurance services to you.

Procover's Privacy Policy which is available at www.procover.com.au or by calling Procover, sets out how:

- Procover protects your personal information;
- you may access your personal information;
- you may correct your personal information held by us;
- you may complain about a breach of the *Privacy Act 1988* (Cth) or Australian Privacy Principles and how Procover will deal with such a complaint.

If you would like additional information about privacy or would like to obtain a copy of the Privacy Policy, please contact Procover's Privacy Officer by:

Postal address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6656

Fax: +61 2 9307 6699

Email: privacyofficer@steadfastagencies.com.au

You can download a copy of Procover's Privacy Policy by visiting www.procover.com.au

DISPUTE RESOLUTION PROCESS

Any enquiry or complaint relating to this insurance should be referred to Procover in the first instance.

Please contact Procover by:

Postal address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6653

Fax: +61 2 9307 6699

Email: servicefeedback@steadfastagencies.com.au

If Procover requires additional information, Procover will contact you to discuss. If your complaint is not immediately resolved Procover will respond within fifteen (15) business days of receipt of your complaint or agree a reasonable appropriate timeframe to respond.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you can contact Lloyd's Underwriters' General Representative in Australia:

Street address: Level 9, 1 O'Connell Street, Sydney NSW 2000

Phone: +61 2 8298 0783

Fax: +61 2 8298 0788

Email: ldraustralia@lloyds.com

who will refer your dispute to the Complaints Team at Lloyd's who will respond to your complaint within fifteen (15) business days, unless an alternative timetable has been agreed with you.

Complaints that cannot be resolved by the Complaints Team may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

CLAIMS MADE AND NOTIFIED INSURANCE

This Policy provides cover on a claims – made and notified basis. This means that the Policy only covers claims first made against you during the period the Policy is in force and notified to the us as soon as practicable in writing while the Policy is in force. The Policy may not provide cover for any claims made against you if at any time prior to the commencement of the Policy you became aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that where you gave notice in writing to us of facts that might give rise to a claim against you as soon as was reasonably practicable after you became aware of those facts while the Policy is in force, we cannot refuse to pay a claim which arises out of those facts, when made, because it was made after the expiry of the Policy.

PREAMBLE

In consideration of payment of the Premium stated in the Schedule, We will provide indemnity in accordance with and subject to the terms and conditions of this Policy.

SECTION 1 - INSURING CLAUSES

1.1 Directors' and Officers' Liability

We will pay on behalf of each Insured Person all Loss for which the Insured Person may not be legally indemnified against by the Corporation, arising from any Claim alleging a Wrongful Act first made against such Insured Person, individually or otherwise, during the Period of Cover, and which is notified to Us during the Period of Cover up to the Limit of Indemnity.

1.2 Special Limit of Indemnity – for all Insured Persons of the Corporation

We will pay the unindemnified Loss of any Insured Person of the Corporation, up to the Special Limit of Indemnity stated in the Schedule, due to a Claim which would otherwise be payable under Insuring Clause 1.1 – Directors' and Officers' Liability when:

- a) the Limit of Indemnity; and
 - b) all other indemnity for Loss available to such Insured Person;
- have been exhausted.

1.3 Corporate Reimbursement

We will pay on behalf of the Corporation all Loss for which the Corporation grants indemnity to an Insured Person, which is legally permitted or required by law, arising from any Claim alleging a Wrongful Act first made against such Insured Person, individually or otherwise, during the Period of Cover, and which is notified to Us during the Period of Cover up to the Limit of Indemnity.

1.4 Entity

We will pay on behalf of the Corporation all Loss arising out of any Claim by reason of a Wrongful Act first made against the Corporation during the Period of Cover and notified to Us during the Period of Cover up to the Limit of Indemnity.

1.5 Employment Practices Liability

We will pay on behalf of each Insured Person and the Corporation all Loss which the Insured is legally obliged, as an employer, to pay, arising from any Claim for an Employment Practices Breach first made against an Insured during the Period of Cover, and which is notified to Us during the Period of Cover up to the Limit of Indemnity. Automatic Extension 2.6 - Reinstatement of Limit of Indemnity does not apply to this cover.

1.6 Superannuation Trustees Liability Cover

We will pay on behalf of the Insured that Loss which the Insured Person is legally obliged to pay by reason of any Claim for a Trustee Responsibility Breach first made against the Insured Person during the Period of Cover and which is notified to Us during the Period of Cover up to the Limit of Indemnity.

1.7 Corporation Crisis Cover

We will pay on behalf of the Corporation any Crisis Loss which the Corporation incurs by reason of a Crisis which first occurs during the Period of Cover and is notified to Us during the Period of Cover.

Our aggregate liability for all Claims under this Insuring Clause will not exceed \$250,000 in excess of the Deductible.

1.8 Statutory Liability Cover

Notwithstanding Exclusion 3.11 - Fines, Penalties, Taxes, We will pay on behalf of the Insured any Penalty resulting from a Claim where the Claim is first made against the Insured and notified in writing to Us during the Period of Cover in respect of a Wrongful Breach.

Our aggregate liability for all Claims under this Insuring Clause will not exceed \$500,000 in excess of the Deductible.

1.9 Tax Audit

We will pay on behalf of the Corporation necessary Tax Audit Costs reasonably incurred by the Corporation up to the completion of the audit or Investigation provided that the Corporation first received a Tax Audit Notice from the Australian Taxation Office during the Period of Cover and the Tax Audit is notified to Us during the Period of Cover.

The Deductible for Tax Audit Costs as stated in the Schedule applies to each and every Tax Audit Notice received by the Corporation during the Period of Cover.

Our aggregate liability for all Claims under this Insuring Clause will not exceed \$500,000 in excess of the Deductible.

1.10 Fraud and Dishonesty by Employees

We shall pay the Corporation its Direct Financial Loss due to Dishonest Acts committed by an Employee and discovered after the date from which the Corporation has maintained uninterrupted fidelity insurance (or equivalent cover).

Our aggregate liability for all Claims under this Insuring Clause will not exceed \$250,000 in excess of the Deductible.

SECTION 2 - AUTOMATIC EXTENSIONS

2.0 Preamble

We agree to provide indemnity as stated in this Section PROVIDED ALWAYS THAT:

- a) each Automatic Extension is subject to all other terms and conditions of this Policy (unless specifically stated to the contrary);
- b) the inclusion of any Automatic Extension will not increase the Limit of Indemnity available under this Policy.

2.1 Advanced Payment of Defence Costs

We agree that in relation to any Claim under this Policy:

- a) where indemnity under this Policy has been confirmed by Us in writing, We will pay Defence Costs arising from such Claim as they are incurred;
- b) where indemnity has not been confirmed by Us in writing:
 - i) where We elect to conduct the defence or settlement of such Claim, We will pay Defence Costs arising from such a Claim as they are incurred;
 - ii) in any other case We will pay Defence Costs arising from such Claim until such time that any fraudulent, dishonest, criminal or malicious conduct has been admitted by an Insured or determined by a court of law;

PROVIDED ALWAYS THAT in the event that the Claim is withdrawn or that indemnity under this Policy is subsequently withdrawn or denied, We will cease to advance Defence Costs and the Insured will refund any Defence Costs advanced by Us to the extent that it is established that the Insured was not entitled to such Defence Costs.

2.2 Retirement Cover

If the Corporation does not renew this Policy or replace it with any other insurance providing Directors' and Officers' Liability coverage and does not purchase the Bilateral Extended Reporting Period detailed in Automatic Extension 2.3 – Bilateral Extended Reporting Period then any Insured Person who retired from all employment or office prior to the expiry of the Period of Cover will be automatically entitled to a once only extension of the Policy for a period of twelve (12) months, immediately following the Period of Cover, but only for Wrongful Acts committed or alleged to have been committed by the Insured Person prior to the date of retirement.

2.3 Bilateral Extended Reporting Period

If this Policy is neither renewed nor replaced with similar cover during the Period of Cover the Corporation and any Insured Person shall jointly have the right upon payment of an amount equal to fifty percent (50%) of the total expiring annual Premium stated in the Schedule to a once only extension of the Policy for:

- a) a further twelve (12) months immediately following the expiring of the Period of Cover with respect to:
 - i) Insuring Clause 1.1 - Directors' and Officers' Liability;
 - ii) Insuring Clause 1.3 - Corporate Reimbursement;
 - iii) Insuring Clause 1.4 - Entity;but only for any Wrongful Act committed or alleged to have been committed or attempted prior to the expiry of the Period of Cover;
- b) a further thirty (30) days immediately following the expiring of the Period of Cover with respect to:
 - i) Insuring Clause 1.10 – Fraud and Dishonesty by Employees;

but only for any Dishonest Act committed or alleged to have been committed or attempted prior to the expiry of the Period of Cover PROVIDED ALWAYS THAT the right to this Automatic Extension is exercised prior to the expiry of the Period of Cover.

2.4 Official Investigations and Enquiries

We agree to pay Defence Costs arising out of any attendance by an Insured Person at any official Investigation, examination, enquiry or other proceedings ordered or commissioned by any official body or institution empowered to investigate the affairs of the Corporation where such Investigation, examination, enquiry or proceedings may lead to a Claim under this Policy PROVIDED ALWAYS THAT:

- a) We will be entitled, at Our absolute discretion, to appoint legal representation to represent the Insured Person involved in the Investigation, examination, enquiry or proceeding;
- b) the Investigation, examination, enquiry or proceeding, or notice of intended Investigation, examination, enquiry or proceeding is made during the Period of Cover and is notified to Us during the Period of Cover;
- c) in the event that a claim for payment of Defence Costs is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, We will cease to advance Defence Costs and the Insured will refund any Defence Costs advanced by Us to the extent that it is established that the Insured was not entitled to such Defence Costs.

2.5 Occupational Health & Safety

Notwithstanding Exclusion 3.6 - Insured V Insured and Exclusion 3.7 - Bodily Injury and Property Damage, in respect of any Claim made against the Insured where such Claim arises from a breach or alleged breach of any Act of Parliament relating to occupational health and safety, We agree to pay Defence Costs PROVIDED ALWAYS THAT such coverage will not extend to costs and expenses incurred in relation to any proceeding or civil claim for damages or compensation arising from that breach or any other Claim otherwise excluded under this Policy.

2.6 Reinstatement of Limit of Indemnity

We will increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity PROVIDED ALWAYS THAT Our total liability under this Policy will not exceed:

- a) in respect of any one Claim on which payment for Loss has been made, or a subsequent Claim arising from the same or a related event, the Limit of Indemnity as specified the Schedule; and
- b) in respect of all Claims, an amount equal to twice the stated Limit of Indemnity.

All payments under this Automatic Extension shall not apply until any payments under any additional insurance have been exhausted.

This Automatic Extension does not apply to Insuring Clause 1.5 - Employment Practices Liability.

2.7 New Subsidiaries

We agree to provide indemnity to the Insured in respect of any Subsidiary, which is created or acquired by the Corporation PROVIDED ALWAYS THAT:

- a) such coverage will only apply in respect of a Wrongful Act actually or allegedly occurring subsequent to the date of creation or acquisition by the Corporation;
- b) in respect to any Subsidiary whose asset values exceed forty percent (40%) of the total consolidated assets of the Corporation at the date of creation or last balance date prior to acquisition:
 - i) indemnity under this Automatic Extension is only valid for sixty (60) days;
 - ii) notification shall be given in writing to Us within sixty (60) days after such creation or acquisition;
 - iii) We may, at Our absolute discretion, provide cover for such Subsidiary subject to additional Premium and/or conditions.

2.8 Subsidiary Run-Off

We agree that where an entity ceases to be a Subsidiary prior to or during the Period of Cover We will provide indemnity to the Insured in respect to such Subsidiary PROVIDED ALWAYS THAT such indemnity will only apply in respect of a Wrongful Act occurring between the date of creation or acquisition by the Corporation and the date such entity ceased to be a Subsidiary.

2.9 Preservation of Indemnity

We agree that if an Insured Person is unable to satisfy a right to indemnity against the Corporation, solely by reason of the Corporation having insufficient funds to indemnify the Insured Person or refusing to do so, then We will provide indemnity in respect of such Insured Person against Loss to the extent that the Corporation could have granted indemnity, as legally permitted or required by law PROVIDED ALWAYS THAT any payment by Us under this Automatic Extension will be subject to the Deductible for Insuring Clause 1.3 - Corporate Reimbursement.

2.10 Estates and Legal Representatives

We agree to provide indemnity to the estate, heirs, legal representatives or assigns of any deceased, incompetent, bankrupt or insolvent Insured Person for any Claim PROVIDED ALWAYS THAT such estate, heirs, legal representatives or assigns will be subject to all the terms and conditions of this Policy insofar as they apply.

2.11 Spousal Liability

We agree to provide indemnity to the Spouse of an Insured Person for any Claim against an Insured Person PROVIDED ALWAYS THAT indemnity is limited to Loss arising from any Claim which:

- a) is made against the Spouse only because they are the Spouse of the Insured Person;
- b) relates to property jointly held by or legitimately and legally transferred between the Insured Person and their Spouse.

2.12 Outside Directorships

We will provide indemnity in respect of any Outside Directorship held by an Insured Person in a Non-Profit Organisation or Organisation at the commencement of the Period of Cover or which is assumed by an Insured Person during the Period of Cover PROVIDED ALWAYS THAT:

- a) such indemnity will not be available under Insuring Clause 1.3 - Corporate Reimbursement to the Non-Profit Organisation or Organisation in which such Outside Directorship is held or under Insuring Clause 1.1 - Directors' and Officers' Liability to any other director or officer (by whatever name) of such Non-Profit Organisation or Organisation who is not also an Insured Person of the Corporation; and
- b) such indemnity will be specifically in excess of any other indemnity available to such Insured Person by reason of serving in such Outside Directorship or under any other similar insurance; and
- c) such indemnity will only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held; and
- d) such indemnity will be non-cumulative with any other insurance issued by Us.

2.13 Outside Directorship Run-off

We will provide indemnity in respect of any Outside Directorship held by an Insured Person in a Non-Profit Organisation or Organisation and which the Insured Person ceased or ceases to hold prior to or during the Period of Cover PROVIDED ALWAYS THAT:

- a) such indemnity will only apply in respect of a Wrongful Act occurring between the date of such Outside Directorship being assumed and the date such Outside Directorship ceased; and
- b) such Outside Directorship was previously indemnified by Us under this Policy or any previous policy; and
- c) all such indemnity under this Automatic Extension will be subject to the terms and conditions of Automatic Extension 2.12 - Outside Directorships.

2.14 Fraud Investigator's Costs

We will pay on behalf of the Insured the reasonable and necessary fees and expenses of a Fraud Investigator retained by the Insured to investigate, prove and report a Direct Financial Loss covered under this Policy.

The cover provided under this Automatic Extension is not subject to a Deductible and will be paid in addition to the Limit of Indemnity.

2.15 Continuity of Cover

Notwithstanding Exclusion 3.3 - Prior or Pending of this Policy, We will indemnify any Insured Person and/or the Corporation for any Claim otherwise covered by this Policy, arising from a Known Circumstance if:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such Known Circumstance; and
- b) We were the Directors' and Officers' Liability insurer of the Insured Person and the Corporation when the Insured Person or the Corporation first knew of such Known Circumstance (whichever be the earlier); and
- c) We continued thereafter, without interruption, to be the Directors' and Officers' Liability insurer of the Insured Person and the Corporation up until this Policy came into effect; and
- d) had We been notified by the Insured Person or Corporation of the Known Circumstance when the Insured Person or Corporation first knew of it, the Insured Person or Corporation would have been relevantly indemnified under the policy in force at that time but is now not entitled to be covered by that policy and the Insured Person or Corporation would have otherwise been covered by this Policy; and
- e) neither the Claim nor Known Circumstance have previously been notified to Us or to any other insurer.

If the Insured Person or Corporation was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuity of Cover Automatic Extension does not apply to provide indemnity under this Policy subject to the provisions of the *Insurance Contracts Act 1984* (Cth).

The Limit of Indemnity provided by Us under this Automatic Extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph b) above or under this Policy. The terms of this Policy otherwise apply.

There is no indemnity provided pursuant to this Automatic Extension in relation to Insuring Clause 1.10 - Fraud and Dishonesty by Employees, Insuring Clause 1.7 - Corporation Crisis Cover or Automatic Extension 2.6 - Reinstatement of Limit of Indemnity.

SECTION 3 - EXCLUSIONS

We will not be liable under this Policy for any Loss arising out of any Claim against an Insured Person or the Corporation, or for Defence Costs incurred pursuant to an inquiry covered under this Policy, or for any Crisis Loss or Fidelity Loss or for any payment under any extension:

3.1 Breach of Professional Duty

arising directly or indirectly from:

- a) the rendering or failure to render professional services and/or professional advice; or
- b) a breach or alleged breach of any contract for the provision of professional services and/or professional advice.

3.2 Major Shareholders - twenty five percent (25%)

brought or maintained by or on behalf of any Major Shareholder PROVIDED ALWAYS THAT this Exclusion shall only apply where the Wrongful Act was committed or was alleged to have been committed at any time after the date on which the Major Shareholder of the Corporation first became a Major Shareholder of the Corporation.

For the purposes of this Exclusion:

- a) Major Shareholder shall mean any person, body corporate, or other entity who is or was entitled to twenty-five percent (25%) or more of the voting shares in the Corporation;
- b) a person, body corporate, or other entity shall be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporate or other entities or is held jointly with others.

3.3 Prior or Pending

- a) made, threatened or intimated against an Insured prior to the Period of Cover;
- b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
 - i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - ii) of which any Insured Person first became aware prior to the Period of Cover, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy.

3.4 Prospectus

arising directly or indirectly from the issue of initial public offering of Securities but not including rights issues, bonus share issues, employee share plans, dividend reinvestment, convertible notes or redeemable preference shares.

3.5 Fraud and Dishonesty

arising directly or indirectly from:

- a) any dishonest, fraudulent, criminal or malicious act or omission or other act or omission committed with criminal intent;
- b) any Wilful breach of any statute, regulation or contract by any Insured where such act, omission or breach is established in fact;
- c) such Insured having improperly benefited in fact from Securities transactions as a result of information that was not available to other sellers or purchasers of such Securities; or
- d) such Insured having gained any personal profit, remuneration or advantage to which such Insured was not legally entitled.

This Exclusion shall not apply to the extent that indemnity is provided for under Insuring Clause 1.10 - Fraud and Dishonesty by Employees.

3.6 Insured V Insured

- a) brought or maintained by or on behalf of an Insured Person or their estate, heirs, legal representatives or assigns, however, this Exclusion will not apply to any Claim brought by an Insured Person for:
- i) contribution or indemnity if such Claim directly results from another Claim covered under this Policy;
 - ii) any of the following:
 - discrimination against any Insured Person on any legally prohibited basis;
 - wrongful dismissal, either actual or constructive, of any Insured Person;
 - workplace harassment (whether sexual or otherwise) of an Insured Person;
 - including the alleged creation or permission of a harassing workplace environment;
 - breach of any express or implied term of any oral or written employment contract;
 - any misleading representation or advertising in respect to conditions of employment;
 - failure to employ or promote;
 - wrongful demotion;
 - failure to grant tenure;
 - wrongful discipline;
 - negligent employee evaluation;
 - wrongful deprivation of career opportunity;
 - denial of natural justice, defamation or invasion of privacy arising from employment related matters;
- b) brought or maintained by or on behalf of the Corporation, however this Exclusion will not apply to any such Claim that is caused to be brought in the name of the Corporation:
- i) as a shareholder derivative action, provided that such shareholder was not also an Insured Person of the Corporation at the time of the Wrongful Act and is acting without any direct or indirect solicitation or enticement of or with any other Insured;
 - ii) by any Regulatory Authority, provided that such Regulatory Authority is acting without any direct or indirect solicitation or enticement of or with any other Insured;
 - iii) at the instigation of a receiver, a receiver and manager, an administrator or liquidator, or trustee formally appointed by a court to administer a compromise or scheme of arrangement of the Corporation.

3.7 Bodily Injury and Property Damage

arising directly or indirectly from:

- a) bodily injury, sickness, disease or death of any person, however this Exclusion will not apply to mental injury, mental anguish, nervous shock or emotional distress not associated with bodily injury;
- b) physical loss of, damage to, or destruction of, any tangible property, including loss of use thereof or any consequential loss.

3.8 Pollution

arising directly or indirectly from:

- a) the actual, alleged or threatened discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
- b) any enforcement, action or proceeding in connection with the containment, clean up, removal, or treatment of such Pollutants;

OTHER THAN the payment of Defence Costs associated with any such Claim.

3.9 Radioactive Contamination and Explosive Nuclear Assemblies

arising directly or indirectly from:

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

PROVIDED ALWAYS THAT this Exclusion will not apply to any Claim arising from radio-isotopes or radium or radium compounds when used away from the place where these are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research activities.

3.10 War and Terrorism

arising directly or indirectly from:

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
- b) any Act of Terrorism

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

- c) any action taken in controlling, preventing, suppressing or in any way relating to a) and/or b) above.

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

3.11 Fines, Penalties, Taxes

arising directly or indirectly from, by reason of or caused by or arising from fines and Penalties imposed by law, punitive, exemplary or aggravated or multiple damages, income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty.

3.12 Additional Exclusions applicable to Insuring Clause 1.4 - Entity

for any Loss arising out of any Claim based upon, arising from or in consequence of:

- a) Contractual Liability

any actual or alleged liability of the Corporation for or in respect of any written or verbal contract or agreement. However, this Exclusion does not apply to a contractual obligation of the Corporation to indemnify an Insured Person against a Loss for which the Insurer has provided cover under Insuring Clause 1.3 - Corporate Reimbursement.

- b) Intellectual Property Rights

any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

- c) Competition and Consumer Act

any actual or alleged violation of the *Competition and Consumer Act 2010* (Cth) and corresponding New Zealand and Australian state and territories fair trading legislation or similar legislation in any other jurisdiction.

3.13 Additional Exclusions applying to Insuring Clause 1.5 - Employment Practices Liability and any cover afforded under Exclusion 3.6 - Insured V Insured

- a) for or in respect of:

- i) a contract of employment alleged to be unfair;
- ii) the seeking of relief pursuant to Section 106 of the *Industrial Relations Act 1996* (NSW) or similar legislation in any other jurisdiction;

- b) in relation to any workers' compensation or occupational health and safety legislation or similar legislation in any other jurisdiction;
- c) for the cost of physical modifications to premises, plant or equipment owned or occupied by the Corporation;
- d) brought about by, contributed to by or which involves industrial disputes (whether between the Corporation or the Insured Persons or between Employees or their union or generally), strike, picket, lockout, go slow or work to rule;
- e) arising directly or indirectly from or involving strikes, lockouts, acts committed during or in connection with any industrial dispute between any parties including any picket, go slow or work to rule;
- f) for the costs of any physical modifications to building or property and/or plant or equipment owned or occupied by the Insured;
- g) in relation to matters involving workers' compensation and/or occupational health & safety issues or any similar or related legislation;
- h) in relation to matters involving insolvency, appointment of a receiver or manager, official manager, administrator or trustee appointed to administer a compromise or scheme of arrangement;
- i) for bodily injury, sickness, disease or death of any person however this Exclusion will not apply to mental injury, mental anguish, nervous shock or emotional distress otherwise covered.

3.14 Additional Exclusions applicable to Insuring Clause 1.10 - Fraud and Dishonesty by Employees

for or in respect of:

- a) any Fidelity Loss sustained outside of Australia or New Zealand or any loss arising out of, based upon, in consequence of or attributable to any loss sustained outside of Australia or New Zealand;
- b) any Fidelity Loss, the existence of which has only been provided by profit and loss figures or by inventory calculations (including stock-takes);
- c) any direct, indirect or consequential loss of income realised or not realised by the Corporation;
- d) any costs incurred by the Corporation in re-writing, amending or re-installing the Corporation's computer programs or systems;
- e) any consequential loss arising from any dishonest, fraudulent, malicious, illegal act or omission on the part of any Insured Person;
- f) any Fidelity Loss caused by or contributed to by an Insured Person who was not employed with the Corporation when the act or omission which caused or contributed to the loss occurred;
- g) any Fidelity Loss caused by or contributed to by directors, consultants, independent contractors, secondees or agents of the Corporation or their respective employees (including the employees of labour hire agencies);
- h) any loss arising from default under a loan or any type of credit offered to or by the Corporation;
- i) any Fidelity Loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which an Insured Person had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent such dishonest, fraudulent, criminal or malicious acts or omissions or any loss arising therefrom;
- j) any Fidelity Loss incurred by or on behalf of any Insured Person who committed or condoned any such dishonest, fraudulent, criminal or malicious acts or omissions;
- k) any Fidelity Loss first discovered prior to the commencement of the Period of Cover or first discovered after the expiration of the Period of Cover;
- l) any Fidelity Loss based upon, arising from or in consequence of any dishonest, fraudulent, malicious or illegal act or omission by any shareholder who at the time of committing such acts had direct or indirect ownership of or control over more than five percent (5%) of the voting share capital of the Corporation or any Subsidiary company;

- m) any Fidelity Loss based upon, arising from or in consequence of the voluntary giving or surrendering of Money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes unless such loss is sustained by reason of any dishonest, fraudulent, malicious or illegal act or omission of any Insured Person;
- n) any loss based upon, arising from or in consequence of the dissemination of or accessing any confidential information including but not limited to patents, trademarks, copyrights, trade secrets, computer programs, or customer information;
- o) any loss based upon, arising from or in consequence of any kidnap, ransom or extortion.

3.15 Additional Exclusions applicable to Insuring Clause 1.8 - Statutory Liability Cover

for or in respect of:

- a) any Wilful, intentional or deliberate Wrongful Breach;
- b) Wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any law;
- c) any Wrongful Breach caused by the gross negligence or recklessness of the Insured;
- d) a fraudulent act, malicious act or malicious omission of the Insured;
- e) a Wrongful Breach of any law relating to consumer protection. This Exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees PROVIDED ALWAYS THAT this Exclusion will apply to Claims by Officers and Employees based upon, attributable to or in any way connected with price exploitation;
- f) a Wrongful Breach related to or in any way connected with a tax, rate, duty, levy, charge, fee or any other revenue charge or impost;
- g) a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- h) any Defence Costs incurred or paid before the consent of the Insurer has been given in accordance with the provisions of this Policy;
- i) any contravention of Sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth) and any amendment, consolidation or re-enactment of any of those Sections;
- j) any Loss recoverable under any other Section of this Policy whether insured or not.

3.16 Additional Exclusions applicable to Insuring Clause 1.9 - Tax Audit

for or in respect of:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the furnishing of information by the Corporation;
- b) inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit;
- c) any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories, or where the services giving rise to the audit are performed by persons or any corporate entity ordinarily resident outside Australia;
- d) matters arising under customs legislation;
- e) any audit or investigations, notice of which or information as to their likely conduct, was received by the Corporation or any person acting on its behalf, prior to the Period of Cover. Receipt of such communication will be taken to have occurred where the Australian Taxation Office makes communication with the Corporation or any other person acting on its behalf;
- f) any fraudulent act, error, omission or fraudulent misrepresentation committed by or on behalf of the Corporation;
- g) the imposition of or seeking to impose any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution;

- h) an audit or investigation of a return of income that has not been prepared or reviewed by the Accountant or Registered Tax Agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return;
- i) Tax Audit Costs incurred after the audit or investigation has been completed.

3.17 Electronic Date Recognition

directly or indirectly arising from:

- a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not;
- b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This Exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

3.18 Sanction Limitation and Exclusion

that would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

SECTION 4 - CONDITIONS

If the Insured does not comply with the following Conditions, We may refuse to pay a Claim in whole or in part or in some circumstances We may cancel the Policy.

4.1 Severability and Non-Imputation

We agree that where this Policy insures more than one party:

- a) the written Proposal form will be construed as being a separate application by each of the Insured Persons and no statement or representation in or within respect to the Proposal by an Insured Person will be imputed to any other Insured Person;
- b) this Policy shall, subject to Condition 4.20 - Non-Accumulation, be construed to be a separate policy between Us and each Insured Person and no breach of any condition of this Policy, fact or knowledge possessed by one Insured Person or misconduct by any Insured Person will be imputed to any other Insured Person;

PROVIDED ALWAYS THAT where there has been a fraudulent misrepresentation, this Condition will only apply when such remaining parties:

- i) are entirely innocent of and have no prior knowledge of any such conduct; and
- ii) notify Us in writing of all known facts in relation to any such conduct as soon as reasonably practicable upon becoming aware of such conduct.

4.2 Reporting and Notice

The Insured will give to Us written notice as soon as practicable of any Claim made against any Insured Person for a Wrongful Act PROVIDED ALWAYS THAT such written notice is given to Us during the same Period of Cover or within thirty (30) days after its expiry.

Notice of any Claim will be given in writing to Us, and delivered to:

Procover Underwriting Agency Pty Ltd
PO Box A2016, Sydney South NSW 1235

4.3 Limit of Indemnity

Our total amount payable under this Policy for Loss in respect of any one Claim will not, in the aggregate, exceed the Limit of Indemnity as specified in the Schedule OTHER THAN in the case of the Special Limit of Indemnity and/or in accordance with Automatic Extension 2.6 - Reinstatement of Limit of Indemnity, Our total liability under this Policy in respect of all Claims will not exceed twice the Limit of Indemnity specified in the Schedule.

The Special Limit of Indemnity is a separate aggregate limit of Our liability to all Insured Persons under Insuring Clause 1.2 - Special Limit of Indemnity - for all Insured Persons of the Corporation and it is in addition to, and not part of, the Limit of Indemnity.

Sub-limits of Indemnity and Extensions (other than Automatic Extension 2.14 - Fraud Investigator's Costs) are part of that amount and are not payable in addition to the Limit of Indemnity. The total amounts payable by Us under any Extensions subject to a Sub-limit of Indemnity shall not exceed the applicable amount specified as such for that Extension. The inclusion of more than one Insured under this Policy does not increase the total amount payable by Us under this Policy.

Any indemnity provided under any Extension of this Policy and/or Defence Costs incurred are part of and not in addition to the Limit of Indemnity applicable to any one Claim. Any amount paid by Us in settlement of a dispute which may otherwise become a Claim will be deemed to be a Loss for the purposes of this Policy.

4.4 Deductible

Our liability under each and/or every Insuring Clause will only apply to that part of each Loss in respect of each Claim which is in excess of the relevant Deductible as stated in the Schedule and such Deductible will be borne by the Insured Person and/or the Corporation (as the case may be) at their own risk.

The Deductible applies to Defence Costs and Investigation Costs.

A single Deductible shall apply to Loss arising from all Claims alleging the same Wrongful Act or Direct Financial Loss arising from the same Dishonest Acts.

4.5 Multiple Claims

Where a single Wrongful Act gives rise to more than one Claim, all such Claims will jointly constitute one Claim under this Policy, and only one Deductible will be applicable in respect of such Claim.

Where a Claim is based on causally connected or interrelated Wrongful Acts these will jointly constitute a single Wrongful Act under this Policy.

4.6 Additional Notification Period

We agree that the Insured may notify a Claim in accordance with Condition 4.2 - Reporting and Notice either during the Period of Cover or within thirty (30) days after its expiry PROVIDED ALWAYS THAT such Claim was made against the Insured Person during the Period of Cover.

4.7 Authorisation

The Corporation as specified in the Schedule, agrees to act on behalf of all Insured Persons under this Policy and each Insured Person agrees that the Corporation will act on their behalf with respect to the giving and receiving of notice of any Claim, the giving and receiving of notice of cancellation or expiry of this Policy, the payment of Premium and the return of any Premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any notice provided for in this Policy.

4.8 Defence and Settlement

Subject to the provisions of the *Insurance Contracts Act 1984* (Cth), as a condition precedent to the right to indemnity under this Policy the Insured agrees not to settle any Claim, incur any costs or expenses in connection therewith, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without Our written consent.

We will be entitled at any time to take over and conduct, in the name of the Insured, the defence or settlement of any Claim. Any amount incurred by Us on behalf of the Insured will be deemed to be part of the Loss.

4.9 Insured's Right to Contest

In the event that We recommend settlement in respect of any Claim and the Insured does not agree that such Claim should be settled or refuses to consent to such settlement, then the Insured may elect to continue any legal proceedings connected therewith or contest such Claim PROVIDED ALWAYS THAT Our liability for all Loss in connection with such Claim will not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with Our written consent up to the date of such election.

4.10 Senior Counsel Clause

Neither an Insured Person nor Us will be required to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and Us) shall advise that such Claim should be contested. In formulating such advice, Senior Counsel will take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Insured successfully defending the Claim.

The cost of such Senior Counsel's opinion will be regarded as part of the Defence Costs.

4.11 Use of Fraud Investigator

The Fraud Investigator shall:

- a) investigate the facts behind a Direct Financial Loss;
- b) determine the quantum of a Direct Financial Loss;
- c) advise when and how the Insured's controls were or may have been breached;
- d) summarise recommendations which may prevent future similar Direct Financial Loss; and
- e) issue a report limited to the foregoing, in a format approved by Us, in duplicate to the Insured and Us.

We have the right to attend the initial meeting between the Insured and the Fraud Investigator. The Insured is not obliged to use the services of a Fraud Investigator.

If the Insured does not elect to retain a Fraud Investigator, then any costs or expenses incurred by, on behalf of or in the right of an Insured in connection with investigating and proving a Direct Financial Loss shall be incurred solely at the expense of the Insured and this Policy shall not cover any such costs or expenses.

4.12 Claims Mitigation and Co-Operation

The Insured will use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss hereunder and will frankly and honestly disclose to Us all relevant information and will immediately provide assistance to Us as We may require to enable Us to investigate and to defend any Claim under this Policy and/or to enable Us to determine Our liability under this Policy.

On request from the Insured for indemnity under this Policy We may provide assistance and take whatever actions We may consider necessary to mitigate any Loss or protect the Insured's interests and position in respect to the Claim which in no way will prejudice Our position under this Policy and will in no way be an admission of the Insured's entitlement to indemnity under this Policy.

4.13 Subrogation

In the event of any payment under this Policy, We will be subrogated to the extent of such payment to all the Insured's rights of recovery, and the Insured will execute all papers required and will do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable Us effectively to bring suit in the name of the Insured except to the extent that all right of subrogation is waived in respect to:

- a) the Corporation unless indemnity has been provided under Automatic Extension 2.9 - Preservation of Indemnity of this Policy;
- b) any Insured Person in respect to whom indemnity has been provided under this Policy PROVIDED ALWAYS THAT if any such Loss is covered by any other insurance policy the right of subrogation is maintained to the extent of the amount collectable under such other insurance policy.

Nothing in this Condition shall be deemed to constitute the waiver of rights to collect the Deductible as stated in the Schedule and applied in accordance with the terms and conditions of this Policy.

4.14 Allocation

If a Claim against an Insured Person includes both covered and uncovered matters or such Claim is made, and others (including the Corporation) are a party to the proceedings or demand to which the Claim relates then We will use Our best efforts to agree upon a fair and proper allocation of such amount between covered Loss and uncovered Loss.

We will advance Defence Costs which We believe to be covered under this Policy based upon the above noted allocation until a different allocation is negotiated or judicially determined. Any negotiated or judicially determined allocation of Defence Costs on account of a Claim will be applied retrospectively to all Defence Costs on account of such Claim.

4.15 Takeover or Acquisition

If the Corporation, during the Period of Cover, is acquired by, merged into, or becomes a subsidiary of any other entity then the cover provided by this Policy will only apply in respect of a Wrongful Act occurring prior to the effective date on which the Corporation was acquired by, merged into, or became a subsidiary of such other entity.

4.16 Territory & Jurisdiction

- a) The indemnity provided under this Policy will extend to a Wrongful Act occurring anywhere in the world excluding the United States of America or the Dominion of Canada or their territories or protectorates.
- b) The Indemnity provided under this Policy will extend to any Claim made anywhere in the world except:
 - i) any Claim made in, or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates; or
 - ii) any Claim arising out of the enforcement of judgements, orders or awards obtained within, or determined pursuant to the law of, the United States of America or the Dominion of Canada or their territories or protectorates.

4.17 Confidentiality

The Insured shall not disclose the nature or extent of the liability indemnified by this Policy, the Limit of Indemnity or the amount of the Premium paid, to any third party except to the extent that they are required to do so by law.

4.18 Cancellation

The Insured may cancel this Policy at any time during the Period of Cover by giving Us written notice. We will allow a pro-rata refund for the unexpired Period of Cover less any non-refundable duties or charges and a fifteen percent (15%) cancellation fee subject to a maximum refund of seventy-five percent (75%) of the annual Premium. We will not refund any Premium if any Claim has been notified during the Period of Cover.

We may cancel this Policy in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth) by giving written notice to the Insured. We will allow a pro-rata refund of the Premium for the unexpired Period of Cover less any non-refundable duties or charges.

4.19 Policy Construction and Interpretation

- a) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- b) For the purposes of this Policy, the masculine includes the feminine, and the singular includes the plural and vice versa unless the context otherwise requires it.

4.20 Non-Accumulation

The inclusion of more than one Insured Person under this Policy will not operate to increase the Limit of Indemnity as stated in the Schedule.

4.21 Service of Suit

The Underwriters accepting this insurance agree that:

- a) if a dispute arises under this Policy, this Policy will be subject to Australian law and practice. The Underwriters and the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- b) any summons, notice or process to be served upon Us may be served upon:

Street Address: Lloyd's Australia Limited
Level 9, 1 O'Connell Street, Sydney NSW 2000

who has authority to accept service and to appear on Underwriters' behalf and who is directed at the request of the Insured to give a written undertaking to the Insured that it will enter an appearance on the Underwriters' behalf;

- c) if a suit is instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such court or any competent appellate court.

In the event of Claim arising under this Policy IMMEDIATE NOTICE should be given to Procover.

4.22 Additional Conditions applicable to Insuring Clause 1.9 - Tax Audit

We only pay Tax Audit Costs under Insuring Clause 1.9 - Tax Audit if:

- a) all taxation and other returns are submitted within the time limits prescribed by all relevant statutes and regulations or as required by or on behalf of the Australian Taxation Office or within the extensions of time granted by the Australian Taxation Office;
- b) upon the Corporation or any other person acting on its behalf becoming aware of any error or deficiencies in any information, return of income or any other documentation furnished to the Australian Taxation Office, the Australian Taxation Office is notified accordingly without delay;
- c) all taxes are paid by the due date or within any extension granted by the Australian Taxation Office;
- d) a full and complete disclosure of all income including capital gains as required by any legislation is made by the Corporation or any other person acting on its behalf;
- e) all correspondence, requests and inquiries from the Australian Taxation Office are dealt with within reasonable time;
- f) direct access to the Accountant or Registered Tax Agent is granted to Us and full cooperation by them is given to Us;
- g) at Our request the Corporation instructs all Accountants or Registered Tax Agents, lawyers or other persons or organisations engaged by the Corporation to produce to Us, without delay, any documents or information or advice in the Insured's or their possession which We shall require in connection with any Claim made under Insuring Clause 1.9 - Tax Audit.

4.23 Several Liability Notice

The subscribing Underwriters' obligations under this Policy to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

4.24 Failure to pay Premium

The Premium must be paid. We may take steps to cancel the contract of insurance for non-payment of the Premium.

SECTION 5 – DEFINITIONS

The words listed below have been given a specific meaning in this Policy and these specific meanings apply when the words begin with a capital letter.

5.1 Accountant or Registered Tax Agent

“Accountant or Registered Tax Agent” means a person who is not an Insured Person and is recognised by either the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by the Corporation or the purpose of preparing, or supervising the preparation of, or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office, in respect of any liability to pay tax by the Corporation.

5.2 Act of Parliament

“Act of Parliament” means any Act of the Parliaments of the Commonwealth of Australia (and/or Australian States and Territories) or New Zealand.

5.3 Claim

“Claim” means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross-claim or counter-claim alleging any Wrongful Act which is both issued and served upon an Insured entitled to indemnity under this Policy including any written or oral demand for compensation received by the Insured alleging any Wrongful Act which a reasonable person may believe might result in a claim for compensation, damages or other relief against an Insured.

For the purpose of Insuring Clause 1.8 - Statutory Liability Cover only, Claims means any written notice received by the Insured which alleges a Wrongful Breach and claims that the Insured may be liable to pay a Penalty.

5.4 Corporation

“Corporation” means the entity specified in the Schedule and is deemed to include all Subsidiaries.

5.5 Crisis

“Crisis” means any one of the following unforeseen events which in the reasonable professional opinion of the managing director or chief executive officer of the Corporation has the potential to cause an imminent decrease of greater than thirty percent (30%) of the total consolidated annual revenues of the Corporation if left unmanaged:

- a) the loss of the Corporation’s intellectual property rights including patents, trademarks, or copyrights that were previously acquired by the Corporation;
- b) the loss of a major customer or major contract of the Corporation;
- c) the recall of any product which has been manufactured, produced, packaged or distributed by the Corporation due to its potential to cause property damage or bodily injury to others;
- d) any act on the premises of the Corporation that causes death or injury of an Insured Person or causes emotional distress to an Insured Person or customers of the Corporation from witnessing such an act;
- e) any destruction or damage to tangible property belonging to the Corporation not caused by a natural disaster.

“Crisis” does not include an event that affects a Corporation’s industry in general rather than a Corporation, specifically.

5.6 Crisis Loss

“Crisis Loss” means the reasonable and necessary fees, costs and expenses paid by the Corporation for external crisis management services provided in response to a Crisis event within the first thirty (30) days after the event.

5.7 Deductible

“Deductible” means the amount of deductible as specified in the Schedule which the Insured must pay to each Claim. It is described in more detail in Condition 4.4 - Deductible.

5.8 Defence Costs

“Defence Costs” means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any Insured Person) incurred by Us or with Our prior written consent incurred:

- a) in defending, investigating or monitoring any Claim, or proceeding and appeals there from together with the costs of appeal;
- b) in relation to any legally compellable attendance by an Insured Person at any official Investigation, examination or enquiry pursuant to Automatic Extension 2.4 - Official Investigations and Enquiries.

Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then the Insurer will not be liable for that proportion of the Defence Costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

5.9 Direct Financial Loss

“Direct Financial Loss” means direct financial loss caused by the loss of Money, Securities or other property:

- a) owned by the Corporation; or
- b) in the care, custody or control of the Corporation and for which the Corporation is legally liable.

Direct Financial Loss does not include:

- i) wages, salaries or other remuneration or benefits paid by the Corporation to its Employees and Executives;
- ii) complete or partial non-payment or default under any credit arrangement; or
- iii) any costs, fees or other expenses incurred by the Insured in prosecuting or defending any demand, claim or legal proceeding resulting from a Direct Financial Loss which is covered under this Policy.

5.10 Discovered

“Discovered” or “Discovers” or “Discovery” means when any Executive (who is not in collusion with an Employee who has or is attempting to commit a Dishonest Act) first becomes aware of any facts which would cause a reasonable person to assume that a Direct Financial Loss which may be covered under this Policy has been or is likely to be incurred, even though the exact amount or details of the Direct Financial Loss are not known at the time the Executive first became aware of such facts.

5.11 Dishonest Acts

“Dishonest Acts” means any fraudulent or dishonest acts committed by an Employee (acting alone or in collusion with others) with the principle intent to cause the Corporation to sustain a Direct Financial Loss and results in the Employee making an improper financial gain for themselves or for any other individual or organisation intended by the Employee to receive such gain.

5.12 Employee

“Employee” means either:

- a) any natural person who is a past, present or future full-time, part-time, seasonal or temporary employee; or
- b) in the case of Insuring Clause 1.10 - Fraud and Dishonesty by Employees only, a natural person who is a full-time, part-time, seasonal or temporary employee at the time of Discovery;

who are not Executives, auditors, consultants, independent contractors, secondees or agents.

5.13 Employment Practices Breach

“Employment Practices Breach” means:

- a) discrimination against any Insured Person on any legally prohibited basis;
- b) wrongful dismissal, either actual or constructive, of any Insured Person;
- c) workplace harassment (whether sexual or otherwise) of an Insured Person, including the alleged creation or permission of a harassing workplace environment;
- d) breach of any express or implied term of any oral or written employment contract;
- e) any misleading representation or advertising in respect to conditions of employment;
- f) failure to employ or promote;
- g) wrongful demotion;
- h) failure to grant tenure;
- i) wrongful discipline;
- j) negligent employee evaluation;
- k) wrongful deprivation of career opportunity;
- l) denial of natural justice, defamation or invasion of privacy arising from employment related matters.

5.14 Executive

“Executive” means any natural person who is a past, present or future:

- a) duly elected or appointed director or trustee (other than a trustee of an insolvent entity);
- b) executive officer or senior manager; or
- c) any other person with duties equivalent to those of the positions listed in a) or b) above.

5.15 Fidelity Loss

“Fidelity Loss” means Direct Financial Loss caused by the loss of Money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes:

- a) owned by the Corporation; or
- b) in the care, custody or control of the Corporation and for which the Corporation is legally liable.

Fidelity Loss does not include wages, salaries, or other remuneration benefits of Insured Persons incurred by the Corporation.

5.16 Fraud Investigator

“Fraud Investigator” means an appropriate fraud investigator who has no conflict of interest, nominated by the Insureds and approved in writing by the Insurer, to establish proof of Direct Financial Loss.

5.17 Insured

“Insured” means either in the singular or plural, the Corporation and any Insured Person.

5.18 Insured Person

“Insured Person” means any natural person who is or was or may hereafter become a director, secretary, officer or Employee of the Corporation, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or officer of the Corporation.

Insured Person does not include:

- a) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between the Corporation and any other person or persons;
- b) a trustee or administrator of any superannuation, pension, welfare or other employee benefit plan or scheme or employees of such organisations;
- c) any company, organisation or other body corporate.

5.19 Investigation

“Investigation” means any investigation, examination or inquiry by any regulator, government authority or official trade body into the affairs of the Corporation or conduct of an Insured Person as an Executive or Employee of a Corporation or an Outside Directorship.

5.20 Known Circumstance

“Known Circumstance” means any fact, situation or circumstance which:

- a) any Insured Person was aware of prior to this Policy inception; or
- b) a reasonable Insured Person would have considered at any time prior to the Period of Cover might result in someone making an allegation against an Insured Person in respect of a Loss that might be covered under this Policy.

5.21 Limit of Indemnity

“Limit of Indemnity” means the limit of Our liability under this Policy as specified in the Schedule. It is described in more detail in Condition 4.3 - Limit of Indemnity.

5.22 Loss

“Loss” means the total amount payable by an Insured Person in respect of a Claim made against such Insured Person for a Wrongful Act and includes damages, judgements, settlements, legal costs and expenses awarded against an Insured Person and Defence Costs.

“Loss” includes damages, judgements, settlements, interest, costs, Defence Costs and back pay where reinstatement is order by the courts but excludes any amounts imposed under a specific obligation of a contract of employment, implied or otherwise.

“Loss” does not include punitive, aggravated, multiple or exemplary damages, or fines or Penalties imposed by law, including but not limited to, civil penalties.

For the purpose of Insuring Clause 1.5 - Employment Practices Liability only, Loss means damages, judgements, settlements, interest, costs, Defence Costs and back pay where reinstatement is order by the courts but excludes any amounts imposed under a specific obligation of a contract of employment, implied or otherwise.

For the purpose of Insuring Clause 1.8 - Statutory Liability Cover only, Loss means any Penalty and/or Defence Costs.

5.23 Money

“Money” means local or foreign currency, coins, bank notes, cheques, travellers’ cheques, registered cheques, postal orders, money orders, bullion and EFT (Electronic Funds Transfer).

5.24 Non-Profit Organisation

“Non-Profit Organisation” means any company, entity, body, committee, council, club, association, trust or other enterprise whether incorporated or unincorporated that is exempt from the payment of income tax under State or Federal law and is not a Subsidiary.

5.25 Outside Directorship

“Outside Directorship” means the position of director, officer, trustee, governor, councillor, secretary or equivalent position held by an Insured Person in an Organisation or Non-Profit Organisation, which position is held at the request or direction of the Corporation.

5.26 Organisation

“Organisation” means any company, entity, body, committee, council, club, association, trust (other than a Trust) or other enterprise, whether incorporated or unincorporated, provided that it is not a subsidiary company and/or a company listed on any stock exchange.

5.27 Penalty

“Penalty” means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act of Parliament for a Wrongful Breach by the Insured but excluding:

- a) any amounts payable as compensation;
- b) any compliance, remedial, reparation or restitution costs;

- c) any damages, including any exemplary or punitive damages;
- d) any consequential economic loss;
- e) any Defence Costs and associated expenses;
- f) any fine or penalty the insurance of which is prohibited at law.

Notwithstanding paragraph e) above, the We will pay any reasonable Defence Costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy PROVIDED ALWAYS THAT where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in paragraphs a) - d) above, We will not be liable for that proportion of the defence costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in paragraphs a) - d) above.

5.28 Period of Cover

“Period of Cover” means the time from which cover commenced to the time cover expires specified in the Schedule.

5.29 Policy

“Policy” means:

- a) this Policy Wording document;
- b) the Schedule;
- c) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover; and
- d) the Proposal.

5.30 Pollutants

“Pollutants” means:

- a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis and chemicals;
- b) any waste materials including material to be recycled, reconditioned or reclaimed; or
- c) any other air emission, odour, waste water, oil, oil product, infectious or medical waste, asbestos, asbestos product or noise emission.

5.31 Premium

“Premium” means the premium specified in the Schedule or in any endorsement or amendment to the Schedule.

5.32 Proposal

“Proposal” means the written Proposal form submitted to Us containing particulars and statements (together with any other written information which may have been supplied in conjunction therewith) bearing the date as stated in the Schedule and relied on by Us to effect this Policy.

5.33 Regulatory Authority

“Regulatory Authority” means a person or entity acting pursuant to any law of the Commonwealth of Australia or the States or Territories of the Commonwealth of Australia for the purposes of enforcement of law.

5.34 Schedule

“Schedule” means the Schedule to this Policy issued by Us.

5.35 Securities

“Securities” means any negotiable or non-negotiable instruments or contracts representing Money or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

5.36 Senior Counsel

“Senior Counsel” means a barrister in active practice who is entitled to use the post-nominalism S.C. in any one or more superior courts in Australia or New Zealand.

5.37 Spouse

“Spouse” means any lawful spouse, civil partner or person deriving a similar status by reason of statute or common law.

5.38 Subsidiary

“Subsidiary” means:

- a) any company or other incorporated entity which by virtue of any applicable Australian legislation or law is deemed directly or indirectly to be a subsidiary of the Corporation specified in the Schedule; or
- b) any company or other incorporated entity over which the Corporation specified in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such company or entity.

5.39 Tax Audit Costs

“Tax Audit Costs” means any fees, charges or disbursements of an Accountant or Registered Tax Agent or any other consultant who is not an Insured Person engaged by or replacing the Accountant or Registered Tax Agent, for work undertaken in connection with the audit or investigation.

5.40 Tax Audit Notice

“Tax Audit Notice” means any notification from the Australian Taxation Office relating to the Corporation’s liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (goods and services) tax, superannuation payments tax, termination payments tax, or sales tax (including the amount of any such tax) only.

5.41 Trust

“Trust” means a trust in respect of a superannuation or pension fund, as specified in the Schedule, administered by the Trustee for the benefit of the Employees of the Corporation.

5.42 Trustee

“Trustee” means any natural person who was or now is or may hereafter become a trustee of a Trust.

5.43 Trustee Responsibility Breach

“Trustee Responsibility Breach” means any actual or alleged Wrongful Act or omission committed by a Trustee in their or its capacity as a Trustee but only in respect of the administration of the Trust.

5.44 Us/We/Our/the Insurer

“Us”, “We”, “Our” and the “Insurer” mean certain Underwriters at Lloyd’s (‘the Underwriters’).

5.45 Wilful

“Wilful” means acting with intentional or reckless disregard for the consequences of the act or failure.

5.46 Wrongful Act

“Wrongful Act” means an actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an Insured Person, individually or otherwise, in the course of the Insured Person’s duties to the Corporation.

5.47 Wrongful Breach

“Wrongful Breach” means any act, error or omission whereby:

- a) the Insured contravenes an Act of Parliament or is involved in the contravention of an Act of Parliament;
- b) the Insured commits an offence pursuant to an Act of Parliament; or
- c) such conduct is prohibited under an Act of Parliament or is the subject of the imposition of a Penalty under an Act of Parliament.

Procover Underwriting Agency Pty Ltd

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