



**Procover** Professional Indemnity (Civil Liability)  
Insurance Policy Wording

Dated 1 July 2021



# Procover Professional Indemnity (Civil Liability) Insurance Policy Wording

## Table of Contents

<b>Important Information</b>		2
<b>Section 1</b>	Insuring Clauses	5
<b>Section 2</b>	Automatic Extensions	7
<b>Section 3</b>	Optional Extensions	9
<b>Section 4</b>	Definitions	10
<b>Section 5</b>	General Conditions	13
<b>Section 6</b>	Claims Conditions	16
<b>Section 7</b>	Exclusions	18

## 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 4 - Definitions of the Policy;
- 'We', 'Us', 'Our' or the 'Insurer(s)' has the same meaning as defined in Section 4 - Definitions of the Policy.

## ABOUT THE INSURER(S)

This Policy is underwritten by certain underwriters at Lloyd's ('Underwriters') (proportion 70%) and HDI Global Specialty SE - Australia (ABN 58 129 395 544, AFSL 458776) ('HDI Global Specialty') (proportion 30%). Both the Underwriters and HDI Global Specialty are collectively referred to as 'We, Us, Our, the Insurer(s)' in this Policy.

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

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

You should contact Procover in the first instance in relation to this insurance.

HDI Global Specialty SE is registered in Germany, with its registered office at Podbielskistraße 396, 30659 Hannover, Germany with registration number HRB211924 authorised by Bundesanstalt für Finanzdienstleistungsaufsicht ('BaFin'). It is authorised to carry on insurance business in Germany under the German Insurance Supervisory Act ('Versicherungsaufsichtsgesetz').

HDI Global Specialty's contact details are:

**Street Address:** Tower 1, Level 33, 100 Barangaroo Avenue, Sydney NSW 2000

**Phone:** +61 2 8373 7580

## GENERAL INSURANCE CODE OF PRACTICE

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ('the Code'), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee ('CGC') is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the CGC go to [www.insurancecode.org.au](http://www.insurancecode.org.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(s) 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

## 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 by the extent of any prejudice We may suffer as a result 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(s) and Procover unless specified otherwise.

We are committed to the safe and careful use of Your personal information in the manner required by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles and the terms of this Policy.

We collect Your personal information in order to assess Your application for insurance and, if Your application is accepted, to administer and manage Your insurance Policy and respond to any Claim that You make. To do this, Your personal information may need to be disclosed to reinsurers and service providers and related entities who carry out activities on Our behalf, such as assessors and facilitators, some of whom may be located in overseas countries such as the United Kingdom and Europe.

Our contractual arrangements generally include an obligation for these reinsurers, service providers and related entities to comply with Australian privacy laws.

By providing Us with Your personal information, You consent to the disclosure of Your personal information to reinsurers, service providers and related entities in overseas countries to enable Us to assess Your application, to administer and manage Your insurance Policy and to respond to any Claim that You make. If You consent to the disclosure of Your personal information to overseas recipients, and the overseas recipient handles Your personal information in a way other than in accordance with the Australian privacy laws, We may not be responsible for the handling of Your personal information by the overseas recipient.

If You choose not to provide Your personal information and/or choose not to consent and/or withdraw Your consent to the disclosure of Your personal information to overseas entities at any stage, We may not be able to assess Your application or administer and manage Your insurance Policy and respond to any Claim that You make.

Our privacy policies contain information on how You may access personal information that each of us hold, or seek correction of Your personal information and information on how to make a complaint about the handling of Your personal information and how complaints are handled. If You require more information, You can access HDI Global Specialty's Privacy Policy and Privacy Statement at <https://www.hdi-specialty.com/int/en/legals/privacy>, and Procover's Privacy Policy at [www.procover.com.au](http://www.procover.com.au)

## COMPLAINTS AND DISPUTE RESOLUTION PROCESS

---

If You have any concerns or wish to make a complaint in relation to this Policy, our services or Your Claim, please let us know and we will attempt to resolve Your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Procover in the first instance:

Procover Underwriting Agency

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6653

**Email:** servicefeedback@steadfastagencies.com.au

We will acknowledge receipt of Your complaint and do our utmost to resolve the complaint to Your satisfaction within ten (10) business days.

If we cannot resolve Your complaint to Your satisfaction, we will escalate Your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited

**Email:** idraustralia@lloyds.com

**Phone:** +61 2 8298 0783

**Postal Address:** Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to You within thirty (30) calendar days of the date on which You first made the complaint unless certain exceptions apply.

You may refer Your complaint to the Australian Financial Complaints Authority ('AFCA'), if Your complaint is not resolved to Your satisfaction within thirty (30) calendar days of the date on which You first made the complaint or at any time. AFCA can be contacted as follows:

**Phone:** 1800 931 678

**Email:** info@afca.org.au

**Postal Address:** GPO Box 3, Melbourne VIC 3001

**Website:** www.afca.org.au

Your complaint must be referred to AFCA within two (2) years of the final decision, unless AFCA considers special circumstances apply. If Your complaint is not eligible for consideration by AFCA, You may be referred to the Financial Ombudsman Service (UK) or You can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to You.

## Claims – Made 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 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

---

Subject to the information that the Insured provided in the Proposal and payment of the premium stated in the Schedule, We agree to provide indemnity to the Insured subject to the terms and conditions of this Policy.

## SECTION 1 - INSURING CLAUSES

- 1.1** We agree to indemnify the Insured up to the Limit of Indemnity against all sums which the Insured becomes legally liable to pay as a result of a Claim first made against the Insured and notified to Us in writing during the Period of Cover for any civil liability incurred or alleged to have been incurred in the conduct of the Insured's Business.
- 1.2** We agree to pay, in addition to the Limit of Indemnity but only up to an amount equal to the Limit of Indemnity, the Costs and Expenses incurred by the Insured, with Our written consent, in defence or settlement of any Claim covered by this Policy. We will not withhold Our written consent unreasonably.

## Policy Coverage Clarifications

---

For the purposes of clarification, the indemnity for civil liability provided in Insuring Clause 1.1 includes the following:

**1.3** *Competition and Consumer Act 2010 (Cth)*

Any Claim for breaches of the consumer protection provisions of the *Competition and Consumer Act 2010 (Cth)* and corresponding consumer protection provisions of the New Zealand and Australian states and territories Fair Trading legislation PROVIDED ALWAYS THAT such indemnity shall not include any liability established by final adjudication under a criminal or penal provision of such legislation.

**1.4** *Intellectual Property*

Any Claim for any actual or alleged infringement or violation of copyrights, trademarks, service marks, registered designs or patents, plagiarism or breach of any confidentiality or breach of any other intellectual property right.

**1.5** *Consultants and Sub-contractors*

Any Claim arising from any act, error or omission committed or alleged to have been committed by any consultant, sub-contractor or agent for whose acts, errors or omissions the Insured is liable PROVIDED ALWAYS THAT no indemnity shall extend to any such consultant, sub-contractor or agent.

**1.6** *Libel and Slander*

Any Claim for libel or slander by reason of words written or spoken by the Insured.

**1.7** *Fraud and Dishonesty*

Any Claim arising out of any dishonest, fraudulent, criminal or malicious acts or omissions of an Employee of the Insured PROVIDED ALWAYS THAT:

- a) no indemnity shall be provided to any person committing or condoning any act or omission; and
- b) the Insured shall take all reasonable steps requested by Us to recover the loss; and
- c) the Insured shall permit Us to take such recovery action in the name of the Insured and the Insured shall assist and co-operate with Us and shall provide Us with such information (including signed statements) as We may reasonably require; and
- d) this cover shall not apply to any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

## 1.8 Loss of Documents

Any Claim arising from the loss of any Documents which have been destroyed, damaged, lost or mislaid and after diligent search cannot be found PROVIDED ALWAYS THAT:

- a) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring (whichever is the lesser) such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by Us with the approval of the Insured; and
- b) such indemnity shall be limited to the loss of any Documents which were in the physical care, custody or control of the Insured or any other person to or with whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of the Insured's Business; and
- c) no indemnity shall be provided for any loss arising from the normal wear and tear and other gradually operating causes; and
- d) any cover provided under this section shall not exceed \$250,000 in the aggregate including all Costs and Expenses OTHER THAN consequential loss arising in connection with such loss of Documents.

## 1.9 Professional or Fiduciary Duties

Any Claim for a breach of duty owed by the Insured to a client or customer of the Insured whether a fiduciary duty or a professional duty of care including warranties of authority.

## SECTION 2 - AUTOMATIC EXTENSIONS

2. The following Automatic Extensions are included automatically in this Policy for nil additional premium PROVIDED ALWAYS THAT these Automatic Extensions are subject to the terms and conditions, Excess and Limit of Indemnity of this Policy. The inclusion of these Automatic Extensions does not increase the Limit of Indemnity of the Policy.

### 2.1 Reinstatement of Limit of Indemnity

We agree to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity PROVIDED ALWAYS THAT:

- a) indemnity under this Policy shall not exceed the Limit of Indemnity stated in the Schedule for any one Claim or series of Claims arising from the same acts, errors or omissions; and
- b) in the aggregate, indemnity shall not exceed an amount equal to twice the Limit of Indemnity stated in the Schedule; and
- c) where there is additional insurance in place in excess of the Limit of Indemnity of this Policy, any indemnity under this Automatic Extension is limited to the sums which are not covered by the additional insurance.

### 2.2 Disciplinary Proceedings and Enquiries Costs

We agree to provide indemnity to the Insured for any Costs and Expenses incurred with Our prior written consent for the representation of the Insured at any disciplinary proceeding, enquiry, coronial inquiry, Royal Commission or government inquiry held by a court, tribunal, judicial body or legally constituted industry or professional body PROVIDED ALWAYS THAT:

- a) the Insured first became aware of such proceeding or enquiry during the Period of Cover and We are notified in writing as soon as reasonably possible during the Period of Cover;
- b) for the purposes of this Automatic Extension the Limit of Indemnity is amended to \$100,000; and
- c) We will not withhold unreasonably Our written consent to the incurring of such Costs and Expenses.

### 2.3 Joint Venture Cover

We agree to indemnify the Insured for their joint & several liability, including vicarious liabilities, arising from the operation or activities of any Joint Venture PROVIDED ALWAYS THAT this cover shall only apply to any Claim or Claims covered by Sections 1 and 2 of this Policy arising from the Joint Ventures as named in the Schedule. If no Joint Ventures are named in the Schedule all liability under this Automatic Extension is limited to the Insured's proportion of liability as determined by final adjudication or ruling.

For the purposes of this Clause a Joint Venture shall be defined as an undertaking (by whatever name called) which the Insured carries on together with another person or entity not otherwise deemed an Insured under this Policy.

### 2.4 Newly Acquired or Created New Subsidiaries

We agree to provide indemnity to the Insured in respect of any subsidiary or entity, which is created or acquired by the Insured as named in the Schedule PROVIDED ALWAYS THAT:

- a) such indemnity shall only apply in respect to any act, error or omission actually or allegedly occurring subsequent to the date of creation or acquisition by the Insured; and
- b) indemnity under this Automatic Extension is only valid for 30 days; and
- c) notification shall be given in writing to Us within 30 days after such creation or acquisition; and
- d) We may at Our discretion provide cover for such subsidiary or entity created or acquired subject to additional premium and/or conditions; and
- e) indemnity shall only be provided in respect to any Claim or Claims arising from the conduct of the Insured's Business as described in the Schedule.



## 2.5 Continuity of Cover

We agree to provide indemnity where the Insured:

- a) first became aware of facts or circumstances that might give rise to a Claim covered by Sections 1 and 2 of this Policy prior to the Period of Cover but had not notified Us of such facts or circumstances prior to the Period of Cover; and
- b) We were the Insured's professional indemnity insurer at the time the Insured first became aware of the facts or circumstances;

in which case Exclusion Clause 7.5 - Prior or Pending Claims will not apply to any notification during the Period of Cover of any Claim resulting from such facts or circumstances;

PROVIDED ALWAYS THAT:

- i) but for the failure of the Insured to notify the prior facts or circumstances when the Insured first became aware of them, the Insured would have been entitled to indemnity under the Policy in force at the time; and
- ii) We have continuously been the Insured's professional indemnity insurer from the date when the Insured first became aware of the facts or circumstances in respect of which notification should have been given and the date when such notification was given; and
- iii) the Limit of Indemnity provided by this Automatic Extension shall be the lesser of the available Limit of Indemnity under the Policy during the Period of Cover and the Limit of Indemnity under the earlier Policy in force when the Insured first became aware of facts or circumstances in respect of which notification should have been given; and
- iv) We may reduce Our liability under the Policy to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Cover.

## 2.6 Pollution Buy-Back Clause

We agree to provide indemnity to the Insured for any Claim first made against them during the Period of Cover arising out of seepage, pollution or contamination, provided such Claim was the result of a negligent act, error or omission in the course of the Insured's Business stated in the Schedule PROVIDED ALWAYS THAT the following conditions shall apply to any cover provided under this Automatic Extension.

This Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from or in connection with:

- a) any liability arising as a result of any land or property being registered under the Environmental Management Register (EMR) or under the provisions of the *Contaminated Land Management Amendment Act 2008* (NSW) or similar legislation enacted by other states or territories of the Commonwealth of Australia or Dominion of New Zealand or any other statutory re-enactment or amendment thereto or within any other register or public record; and
- b) any liability arising as a result of any other statute in connection with seepage, pollution or contamination; and
- c) fines, penalties, punitive, multiple or exemplary damages; and
- d) any Claims arising directly or indirectly from any dishonest, fraudulent, criminal, malicious or illegal act or omission of the Insured, any Employee or director of the Insured or any other person, persons, partnership firm or company acting for or on behalf of the Insured; and
- e) any Claim for property damage other than for which the Insured is or has been working on in connection with the Insured's Business as stated in the Schedule.

PROVIDED ALWAYS THAT Our liability in respect of this Automatic Extension:

- i) shall not include the Excess stated in the Schedule; and
- ii) shall not exceed in the aggregate for the Period of Cover inclusive of all Costs and Expenses the Limit of Indemnity stated in the Schedule and Automatic Extension 2.1 - Reinstatement of Limit of Indemnity is deleted.

## SECTION 3 - OPTIONAL EXTENSIONS

3. The following Optional Extensions are not included in this Policy unless stated in the Schedule. Cover under these Optional Extensions is subject to the terms and conditions, Excess and Limit of Indemnity of this Policy. The inclusion of these Optional Extensions does not increase the Limit of Indemnity of the Policy.

### 3.1 Fidelity Guarantee

We agree to indemnify the Insured for any loss of money, electronic funds transfer (EFT), negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally responsible where such loss:

- a) is sustained in consequence of any dishonest, fraudulent, malicious or illegal act or omission of any Insured or Employee; and
- b) is first discovered by the Insured during the Period of Cover; and
- c) We are notified in writing during the Period of Cover;

PROVIDED ALWAYS THAT:

- i) the Insured shall at their own cost and expense do all things reasonably necessary to establish and prove any such loss under this Optional Extension and We shall be under no obligation to provide any indemnity until We are satisfied such loss has in fact occurred;
- ii) the Insured has notified the police as soon as reasonably practicable of all losses sustained for which recovery is sought under this Optional Extension; and
- iii) any monies which, but for the act or dishonesty or fraud, would have been payable to such person by the Insured shall be deducted from any amount otherwise payable under this Optional Extension; and
- iv) any cover under this Optional Extension is subject to the Fidelity Sub-Limit stated in the Schedule; and
- v) cover under this Optional Extension is subject to the Fidelity Excess stated in the Schedule.

### 3.2 Principal's Previous Business

We agree to provide indemnity to a person named as a principal in the Schedule in respect of Claims otherwise within the scope of the Policy arising from that principal's Prior Professional Practice PROVIDED ALWAYS THAT:

- a) the principal was a qualified principal of a Prior Professional Practice noted in the Proposal; and
- b) this Optional Extension is subject to the terms and conditions and Limit of Indemnity under the Policy for the Period of Cover; and
- c) for the purposes of this Clause, no indemnity shall be provided for a Claim arising from facts or circumstances known to the principal named in the Schedule prior to the Period of Cover, but not notified to Us until after the Period of Cover commenced.

## SECTION 4 - DEFINITIONS

4. 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.

### 4.1 Business

“Business” shall mean the business (or businesses) or profession (or professions) shown in the Schedule.

### 4.2 Claim

“Claim” shall mean:

- a) any writ or summons or other legal form of legal or arbitral process, including cross claims or counter claims, served upon an Insured; or
- b) any written or oral demand for compensation received by the Insured which a reasonable person may believe might result in a claim for compensation, damages or other relief against an Insured.

### 4.3 Costs and Expenses

“Costs and Expenses” shall mean the expenses incurred by or on behalf of the Insured or Us in the investigation or defence of a Claim, including any related appeal or similar process, and shall include legal costs and disbursements.

### 4.4 Computer System

“Computer System” means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

### 4.5 Cyber Act

“Cyber Act” means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any Computer System.

### 4.6 Data

“Data” means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

### 4.7 Data Protection Law

“Data Protection Law” means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

### 4.8 Documents

“Documents” shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronically stored data but shall not include money, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

#### **4.9 Employee**

“Employee” shall mean:

- a) any person employed by the Insured as named in the Schedule under a contract of service or apprenticeship; or
- b) any consultant, sub-contractor or agent PROVIDED ALWAYS THAT:
  - i) this cover shall only apply to services provided for and on behalf of the Insured named in the Schedule; and
  - ii) this cover shall only extend to those consultants, sub-contractors or agents who are deemed employees or who perform more than 90% of their services for and/or on behalf of the Insured named in the Schedule.

#### **4.10 Excess**

“Excess” shall mean the amount of the excess stated in the Schedule which the Insured must pay to each Claim. It is described in more detail in General Condition 5.5 - Excess.

#### **4.11 Insured**

“Insured” shall mean:

- a) the firm, partnership, company or individual named in the Schedule;
- b) any individual who is, has been, or may become during the Period of Cover a principal, partner, director or Employee of the firm named in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;
- c) any predecessor in business of the firm named in the Schedule, but only to the extent of the liability attaching to the firm, partnership or company named in the Schedule;
- d) the estate, heirs, legal representatives or assigns of any Insured under parts a), b) or c) in the event of the death, bankruptcy or legal incapacity of such Insured.

#### **4.12 Limit of Indemnity**

“Limit of Indemnity” shall mean the limit of liability under this Policy as stated in the Schedule. It is described in more detail in General Condition 5.4 - Limit of Indemnity.

#### **4.13 Period of Cover**

“Period of Cover” shall mean the period of time stated in the Schedule for which the Policy is in force.

#### **4.14 Policy**

“Policy” shall mean:

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

#### **4.15 Prior Professional Practice**

“Prior Professional Practice” shall mean a previous business carrying out the functions normally associated with the conduct of a professional practice in the Insured’s profession conducted prior to the Period of Cover.

#### **4.16 Proposal**

“Proposal” shall mean 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 stated in the Schedule.

#### **4.17 Schedule**

“Schedule” shall mean the signed schedule to this Policy issued by Us.

#### **4.18 We, Us, Our, the Insurer(s)**

“Us/We/Our/the Insurer(s)” shall mean certain underwriters at Lloyd’s (‘Underwriters’) and HDI Global Specialty SE - Australia (ABN 58 129 395 544, AFSL 458776) (‘HDI Global Specialty’).

Note: You can obtain further details of the Underwriters from Procover upon request.

## SECTION 5 - GENERAL CONDITIONS

5. The following General Conditions apply to the Policy. If the Insured does not comply with the following General Conditions, We may refuse to pay a Claim in whole or in part.

### 5.1 Policy Construction

- a) The construction, interpretation and meaning of the terms and conditions of this Policy shall be construed in accordance with the laws of the state, territory or country in which the Policy is issued and as stated in the Schedule. Any and all disputes relating to the interpretation of this Policy will be subject to the jurisdiction of the courts of such state, territory or country.
- b) The paragraph titles 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.
- c) For the purposes of this Policy all references to the masculine include the feminine, the singular includes the plural and vice versa.

### 5.2 Alteration of Risk

The Insured shall as soon as reasonably practicable notify Us of any material alteration to the risk during the Period of Cover including but not limited to:

- a) any merger with or acquisition of another business or the commencement of a branch office or joint venture;
- b) the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- c) any material change in the Insured's Business;
- d) cancellation, suspension or termination of any statutory registration relevant to the Insured's Business.

### 5.3 Cancellation

- a) The Insured may cancel this Policy at any time during the Period of Cover by giving written notice to Us. We will allow a pro-rata refund of the premium for the unexpired Period of Cover less any nonrefundable duties or charges and a 15% cancellation fee subject to a maximum refund of 75% of the annual premium. We will not refund any premium if any Claim has been notified during the Period of Cover.
- b) We may cancel this Policy in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth) or any other applicable laws 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.

### 5.4 Limit of Indemnity

Our liability under this Policy shall not exceed for any one Claim or in the aggregate for all Claims during the Period of Cover the Limit of Indemnity stated in the Schedule, such Limit of Indemnity to include all costs and expenses payable to any claimant as part of any judgment or agreed settlement of any Claim or Claims.

If a payment greater than the Limit of Indemnity is made to dispose of a Claim, Our liability for Costs and Expenses under Insuring Clause 1.2 shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to dispose of the Claim.

## 5.5 Excess

The Insured shall bear the amount of the Excess stated in the Schedule in respect of each and every Claim made against the Insured and We shall only be liable to indemnify the Insured, up to an amount equal to the Limit of Indemnity, in excess of that amount including amounts paid under Insuring Clause 1.2.

All expenses incurred by Us pursuant to the appointment or engagement of professional advisers considered necessary by Us to determine the liability of the Insured and to resolve the Claim shall be borne by the Insured except for any costs and expenses incurred by Us to determine whether We have a liability to indemnify the Insured under the Policy which shall be borne by Us.

## 5.6 Multiple Claims

Where one act, error or omission results in more than one Claim against the Insured all such Claims shall jointly constitute one Claim under this Policy.

Where causally connected or interrelated acts, errors or omissions result in a Claim or Claims under this Policy, all such Claims shall be regarded as one Claim.

## 5.7 Territory and Jurisdiction

This Policy shall indemnify the Insured for any Claim covered by Sections 1 and 2 of this Policy first brought in a court of law anywhere in the world and arising from an act, error or omission committed anywhere in the world except for:

- a) any Claim first brought within the United States of America or the Dominion of Canada or their territories or protectorates; or
- b) any Claim arising from the enforcement of any judgment, order or award obtained within, or pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or
- c) any Claim arising from any act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

## 5.8 Interested Parties

This Policy only provides indemnity to those persons or entities noted as Insureds in the Schedule or otherwise included under the terms and conditions of this Policy. No interest in this Policy may be changed, modified, assigned or transferred to any other party without Our prior written consent. We will not withhold unreasonably Our prior written consent to such change, modification, assignment or transfer.

## 5.9 Several Liability

The liability of an Insurer under this contract is several and not joint with other Insurer(s) party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

## 5.10 Service of Suit

The Insurer(s) agree that:

- (i) if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Insurer(s) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons, notice or process to be served upon the Insurer(s) may be served upon:  
Lloyd's Underwriters' General Representative in Australia  
Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000  
**Phone:** (02) 8298 0700  
who has authority to accept service on behalf of the Insurer(s);
- (iii) if a suit is instituted against any of the Insurer(s), the Insurer(s), including all Underwriters participating in this Insurance, will abide by the final decision of such Court or any competent Appellate Court.

In the event of a Claim arising under this Insurance NOTICE should be given as soon as reasonably practicable to Procover.

## 5.11 Severability and Non-Imputation

We agree that where this Policy insures more than one party, the conduct of any party that is an Insured where such party:

- a) fails to comply with the duty of disclosure under the *Insurance Contracts Act 1984* (Cth); or
- b) made a misrepresentation to Us before this contract of insurance was entered into; or
- c) fails to comply with the conditions of this contract of insurance;

shall not prejudice the right of any other Insured party to indemnity under this Policy PROVIDED ALWAYS THAT this General Condition will only apply when such remaining Insured 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.

## 5.12 GST

Where under this Policy We are obliged to indemnify the Insured against any Claim or Claims or Costs and Expenses for which the Insured is entitled to an input tax credit for the GST, the amount of any such input tax credit will be deducted from the amount payable by Us.

## 5.13 Other Insurances

If at the time any Claim arises under this Policy there is any other insurance in force covering the same liability, in part or in full, the Insured shall promptly notify Us of full details of such other insurance, including the identity of the insurer(s) and the policy number(s), and such further information as We may reasonably require.

Subject to the *Insurance Contracts Act 1984* (Cth), We reserve the right to seek a contribution from the other insurer(s).

## 5.14 Fraudulent Claims

If any Claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any loss be occasioned by the wilful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) they might have under this Policy, shall be entitled to refuse to pay such Claim.



## SECTION 6 - CLAIMS CONDITIONS

6. The following Claims Conditions apply to the Policy. If the Insured does not comply with the following Claims Conditions, We may refuse to pay a Claim in whole or in part.

### 6.1 Claims Management

- a) The Insured shall not disclose to any person without Our written consent the nature of or terms and conditions of this Policy, such consent not to be unreasonably withheld.
- b) The Insured shall not admit liability, or incur any Costs or Expenses, or make any admission, arrangement, offer, promise or payment without Our written consent, such consent not to be unreasonably withheld.
- c) Having regard to Your interests, We shall at any time be entitled to take control of or conduct in the name of the Insured the defence or settlement of any Claim. If We believe the Claim will not exceed the Excess We may instruct the Insured to conduct the defence of the Claim. In such circumstance the Insured shall be required to provide Us with regular progress reports and We reserve the right to take control of the defence of such Claim at any time.

### 6.2 Claims Co-operation

- a) The Insured shall as a condition precedent to their right to indemnity under this Policy give to Us such information and co-operation as We may reasonably require to enable Us to investigate and to defend any Claim under this Policy and to make any cross claim for contribution, indemnity or damages and/or to enable Us to determine any liability under this Policy including but not limited to the identification of any parties against whom the Insured may have rights.
- b) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

### 6.3 Notification of Claim

The Insured shall as a condition precedent to their right to indemnity under this Policy give to Us as soon as reasonably practicable notice in writing during the Period of Cover of any Claim whether that Claim be oral or in writing made against the Insured.

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

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

Notwithstanding the Excess contained in this Policy all Claims, complaints or threats of action must be notified to Us and handled and controlled by Us.

### 6.4 Right to Contest

In the event that We recommend the settlement of a Claim and the Insured does not agree that such Claim should be settled then the Insured may elect to contest or continue any legal proceedings therewith PROVIDED ALWAYS THAT Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been settled plus the Costs and Expenses incurred with Our written consent to the date of such election, less the Excess and subject always to the Limit of Indemnity under this Policy.

### 6.5 Right to Subrogation

Where We have made any payment of a Claim under this Policy We shall become entitled to any and all rights the Insured may have against any third party. The Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights including but not limited to the execution of documents necessary to enable Us to effectively bring suit in the name of the Insured and/or the provision of information including signed statements and the giving of evidence at any trial.

## 6.6 Senior Counsel Clause

We nor the Insured shall require the other 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 Costs and Expenses 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 Costs and Expenses.

## SECTION 7 - EXCLUSIONS

This Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from:

### 7.1 War, Civil War and Terrorism

- a) notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- b) confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- c) any Act of Terrorism.

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.

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

### 7.2 Radioactive Contamination and Explosive Nuclear Assemblies

- 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.

### 7.3 Vehicles

the ownership, operation or use of any aircraft, vessel, automobile or any other vehicle or mechanically propelled mobile machinery.

### 7.4 Asbestos/Legionnaires'/Medical Waste

any act, error or omission which results in the discharge, dispersal, seepage, release or escape of any infection or medical waste, asbestos, asbestos products or Legionnaires' disease or any other air-borne disease or virus into or onto any land, soil, vegetation, crop, foodstuff, stockfeed, building, structure, watercourse, underground water supply, aquifer, body of water or into the atmosphere.

### 7.5 Prior or Pending Claims

any Claim:

- a) first made, threatened or intimated against or to the Insured prior to the Period of Cover; or
- b) relating to any matter disclosed or notified to Us or any other insurer prior to the Period of Cover as being a Claim or a circumstance that may give rise to a Claim; or
- c) relating to any litigation that was in progress or pending prior to the Period of Cover; or
- d) relating to any fact or circumstance of which the Insured became aware prior to the Period of Cover and which the Insured knew or ought reasonably to have known may give rise to a Claim.

## 7.6 Intentional Acts

any act or omission of any Insured or their consultants, sub-contractors or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof, or any wilful breach of any statute, contract or duty by any Insured or their consultants, sub-contractors or agents PROVIDED ALWAYS THAT:

- a) this Exclusion shall not apply unless such conduct is established by final adjudication or judgment;
- b) this Exclusion shall not apply to any Insured not committing such acts.

## 7.7 Associated Entities

any Claim brought by or on behalf of:

- a) any person, firm or corporation within the definition of the Insured; or
- b) any member of the family of an Insured UNLESS such Claim or Claims are bought without any solicitation, co-operation and/or influence by or from an Insured; or
- c) any person or entity which owns, operates, manages or controls an Insured entity; or
- d) any entity which is owned by, operated by, managed by or controlled by any Insured party.

## 7.8 Employers' Obligations

any breach of any obligation owed by the Insured as an employer to an Employee including but not limited to:

- a) any personal or bodily injury, mental injury, mental anguish, sickness, disease or death of any Employee; or
- b) damage to or destruction of any property of an Employee; or
- c) any allegation of sexual harassment, sexual discrimination or racial discrimination or any other matter relating to employment practices or any industrial award, determination or legislation.

## 7.9 Contractual Liabilities

any liability relating to a duty or obligation assumed by the Insured by way of warranty, guarantee, contract, indemnity or hold harmless agreement unless such liability would have attached to the Insured notwithstanding such assumed duty or obligation.

## 7.10 Directors' and Officers' Liability

any activities as a trustee, director, secretary or officer of any trust or body corporate unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

## 7.11 Occupiers' Liability

the ownership, use, occupation or leasing of property (real or otherwise) by, to or on behalf of the Insured.

## 7.12 Fines and Penalties

any claim for punitive, aggravated, multiple or exemplary or other non-compensatory damages; taxes, duties, or fines or penalties imposed by law PROVIDED ALWAYS THAT this Exclusion shall not apply to compensatory civil penalties arising in connection with a breach of the Insured's professional duties. However We will not be liable for any compensatory civil penalty for which We are legally prohibited at law from covering the Insured.

## 7.13 Professional Fees

any matter relating to the Insured's entitlement or otherwise to fees or charges for work performed.

## 7.14 Insolvency

the insolvency, bankruptcy or liquidation of the Insured.

## 7.15 Retroactive Date

any act, error or omission committed or alleged to have been committed prior to the retroactive date stated in the Schedule.

#### **7.16 Other Insurances**

any liability for which the Insured is or would be insured under any policy of insurance required to be effected by or under any law.

#### **7.17 Sale and Supply of Goods**

the sale, storage, supply or distribution of any good, or any actual or alleged provision of advice associated with the sale, storage, supply or distribution of any good except where a Claim arises directly from the cost incurred in correcting an act, error or omission in design or specification by the Insured, but shall not include any cost associated with the disposal, repair, recall, manufacture or replacement of any good or goods PROVIDED ALWAYS THAT this Exclusion shall not apply to any advice or specification in respect to the manufacturer's recommendations or guidelines.

#### **7.18 Toxic Mould**

any Claim involving in any way the actual or potential presence of mould, mildew or fungi of any kind whatsoever, whether or not directly or indirectly caused by or resulting from the conduct of the Insured's Business.

#### **7.19 Electronic Date Recognition**

- 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; or
- 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.

#### **7.20 Sanction Limitation and Exclusion**

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

#### **7.21 Cyber and Data Protection Law Exclusion**

- a) a Cyber Act; or
- b) any partial or total unavailability or failure of any Computer System;  
provided the Computer System is owned or controlled by the Insured or any other party acting on behalf of the Insured in either case; or
- c) the receipt or transmission of malware, malicious code or similar by the Insured or any other party acting on behalf of the Insured; or
- d) any failure or interruption of service provided:
  - i) to the Insured or any other party acting on behalf of the Insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the insured;
  - ii) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by the Insured or any other party acting on behalf of the Insured; or
- e) any actual or alleged breach of Data Protection Law by the Insured or any other party acting on behalf of the Insured.

**7.22** Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the Insured or any other party acting on behalf of the Insured in this contract shall not apply to Data.

Procover Underwriting Agency Pty Ltd  
(ABN 46 165 322 592, AR No. 453410)  
Level 5, 97-99 Bathurst Street, Sydney NSW 2000  
PO Box A2016, Sydney South NSW 1235

© Procover Underwriting Agency Pty Ltd 2021

This work is copyright. Apart from any use permitted under the *Copyright Act 1968* (Cth), no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the publisher.

