



**Procover Steadfast Client Trading Platform
Professional Indemnity Insurance Policy Wording**

Dated 1 July 2021

ABOUT STEADFAST

Procover is a wholly owned subsidiary of Steadfast Group Ltd (ABN 98 073 659 677) ('SGL'). SGL may receive a professional services fee ('PSF') from insurers, premium funders and underwriting agencies such as Procover ('Partner') for access to regulatory and compliance support; marketing and communications; data insights; and access to technology platforms. The PSF is an agreed amount between SGL and the relevant Partner, usually annually. The PSF is not determined by the volume of the business that the Steadfast Network brokers place, nor is the amount of the PSF known to the Steadfast Network Brokers, so it is not able to influence recommendations to their clients.

Procover may have access to shared services from SGL, including: compliance tools; procedures; manuals and training; legal; HR; banking; and group purchasing arrangements. These services are funded by SGL, subsidised by SGL or SGL receives a fee for them. SGL's FSG is available at www.steadfast.com.au or on request by telephoning SGL's Company Secretary on +61 2 9495 6500.

This Policy is available exclusively to You through a Steadfast broker. Steadfast does not issue, guarantee or underwrite this Policy.

IMPORTANT INFORMATION ABOUT THIS POLICY

You should consider the appropriateness of this Policy taking into account Your own objectives, financial situation and needs. Before You make any decisions about whether to buy or renew this Policy, You should first read this Policy.

PROCOVER STEADFAST CLIENT TRADING PLATFORM PROFESSIONAL INDEMNITY INSURANCE POLICY WORDING

TABLE OF CONTENTS

ABOUT THIS BOOKLET	4
IMPORTANT INFORMATION	5
POLICY TERMS AND CONDITIONS	9
SECTION 1 – INSURING CLAUSES	9
SECTION 2 – RETROACTIVE DATE	11
SECTION 3 – AUTOMATIC EXTENSIONS	12
SECTION 4 – OPTIONAL EXTENSIONS	18
SECTION 5 – EXCLUSIONS	19
SECTION 6 – CLAIMS CONDITIONS	23
SECTION 7 – GENERAL CONDITIONS	26
SECTION 8 – DEFINITIONS	29

ABOUT THIS BOOKLET

This booklet contains 2 separate parts: Important Information and the Policy Terms and Conditions.

IMPORTANT INFORMATION

This part of the booklet contains information You need to know before You take out a Policy. Please read it carefully before taking out this insurance.

POLICY TERMS AND CONDITIONS

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with a Policy, You will be given a Schedule. The Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Steadfast broker.

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 8 - Definitions of the Policy;
- 'We', 'Us', 'Our' or the 'Insurer(s)' has the same meaning as defined in Section 8 - 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.

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

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) ("Miramar") 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

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(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

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: idaustralia@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 AND NOTIFIED BASIS OF COVER

This Policy is issued on a “Claims made and notified” basis.

This means that the Insuring Clauses respond to:

- (a) Claims first made against You during the Period of Insurance and notified to the Insurer(s) during the Period of Insurance, provided that You were not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in Your position on notice that a Claim may be made against him/her; and
- (b) written notification of facts pursuant to Section 40(3) of the *Insurance Contracts Act 1984* (Cth). The facts that You may decide to notify are those which might give rise to a Claim against You. Such notification must be given as soon as reasonably practicable after You become aware of the facts and prior to the time at which the Policy expires. If You give written notification of facts the Policy will respond even though a Claim arising from those facts is made against You after the Policy has expired. For Your information, Section 40(3) of the *Insurance Contracts Act 1984* (Cth) is set out below:

“S40(3) Where the Insured gave notice in writing to the Insurer(s) of facts that might give rise to Claim against the Insured as soon as was reasonably practicable after the Insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer(s) are not relieved of liability under the contract in respect of the Claim when made by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.”

When the Period of Insurance expires, no new notification of Claims or facts can be made on the expired policy even though the event giving rise to the Claim against You may have occurred during the Period of Insurance.

RETROACTIVE DATE

You will not be entitled to indemnity under Your new Policy in respect of any Claim resulting from an act, error or omission occurring or committed by You prior to the retroactive date, where one is specified in the Policy terms offered to You.

SUBROGATION WAIVER

This Policy contains a provision that has the effect of excluding or limiting the Insurer’s liability in respect of a liability incurred solely by reason of the Insured entering into a deed or agreement excluding, limiting or delaying the legal rights or of recovery against another.

GOODS AND SERVICES TAX

The Premium is the amount You pay Us for this insurance and it includes stamp duty, Goods and Services Tax (‘GST’), other government charges and any fire services levy that applies.

You must tell Us about the input tax credit (‘ITC’) You are entitled to for Your Premium and Your Claim, each time You make a Claim. If You do not give Us this information or if You tell Us an incorrect ITC, We will not pay any GST liability You incur.

We will reduce the GST amount We pay for by the amount of any ITC to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the ITC may be claimable through Your Business Activity Statement (‘BAS’).

The Indemnity Limit and any sub-limits applicable to the Policy and any endorsement attaching to the Policy are exclusive of GST.

You must advise Us of Your correct Australian Business Number & Taxable Percentage.

The above taxation information is only a guide. Your individual circumstances will be important to and may affect the tax treatment of any Premiums You pay or the payment for Claims. You should consult Your tax adviser regarding Your individual circumstances.

POLICY TERMS AND CONDITIONS

PREAMBLE

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

SECTION 1 – INSURING CLAUSES

INSURING CLAUSE A

1.1 CIVIL LIABILITY INSURING CLAUSE

We agree to indemnify the Insured up to the Indemnity Limit for any Claim (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) first made against the Insured during the Period of Insurance and notified to Us during the Period of Insurance in respect of civil liability incurred or alleged to have been incurred in the conduct of the professional activities and duties of the Professional Business.

INSURING CLAUSE B

1.2 COSTS AND EXPENSES INSURING CLAUSE

We agree to pay Costs and Expenses in addition to the Indemnity Limit, but only up to an amount not exceeding the Indemnity Limit, in respect of any Claim indemnified by this Policy.

If We elect not to take over and conduct, in the name of the Insured, the defence or settlement of a Claim, We agree to pay Costs and Expenses within a reasonable time frame following Our receipt of invoices specifying such Costs and Expenses and prior to determining the Insured's entitlement to indemnity for the Claim.

In determining the Insured's entitlement to indemnity under this Policy in respect of a Claim, We agree that We will not rely on Exclusion 5.6 Fraud, Dishonesty or Intentional Acts unless and until:

- (a) the Insured makes an admission in writing of any conduct described in Exclusion 5.6 Fraud, Dishonesty or Intentional Acts; or
- (b) it has been established through a judicial process that the Insured has committed any conduct described in Exclusion 5.6 Fraud, Dishonesty or Intentional Acts.

The payment of any Costs and Expenses is subject to the following conditions:

- (i) the payment of any Costs and Expenses to the Insured by Us does not constitute an acceptance by Us of the Insured's right to indemnity for any Claim;
- (ii) if either 1.2(a) or 1.2(b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, We may cease to pay Costs and Expenses to the Insured, unless We, having regard to Your interests, acting reasonably and at Our discretion, decide to continue to pay Costs and Expenses resulting from such Claim;
- (iii) where either 1.2(a) or 1.2(b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, the Insured will refund Costs and Expenses paid by Us, unless We agree in writing to waive recovery of such Costs and Expenses.

INSURING CLAUSES CLARIFICATION

For the avoidance of doubt, the indemnity for civil liability provided by Insuring Clauses A and B (1.1 Civil Liability Insuring Clause and 1.2 Costs and Expenses Insuring Clause) includes the following:

- 1.3 breach of a contract for the provision of professional services;
- 1.4 breach of fiduciary duty;
- 1.5 breach of warranty of authority committed, by or on behalf of the Insured, in good faith and in the belief that appropriate authority was held;
- 1.6 any unintentional infringement of copyright, moral right (under the *Copyright Act 1968* (Cth)), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality;
- 1.7 defamation;
- 1.8 under the terms of the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 1987* (NSW), the *Fair Trading Act 1985* (VIC) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

SECTION 2 – RETROACTIVE DATE

- 2.1 “Unlimited Retroactive Cover” – if no Retroactive date is specified in the Schedule or if the Retroactive date is specified in the Schedule as “Unlimited”, this Policy shall provide indemnity in respect of Claim(s) covered by Insuring Clauses A and B (1.1 Civil Liability Insuring Clause and 1.2 Costs and Expenses Insuring Clause) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- 2.2 “Limited Retroactive Cover” – where a Retroactive date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claim(s) covered by Insuring Clauses A and B (1.1 Civil Liability Insuring Clause and 1.2 Costs and Expenses Insuring Clause) arising from acts, errors or omissions committed or alleged to have been committed on or after the Retroactive date.

SECTION 3 – AUTOMATIC EXTENSIONS

PREAMBLE

We shall provide indemnity as is available under this Section 3 – Automatic Extensions, for nil additional Premium, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- (b) the inclusion of any Automatic Extension shall not increase the Indemnity Limit.

3.1 CLAIMS PREPARATION COSTS

We will pay up to \$25,000 in the aggregate during the Period of Insurance for reasonable professional fees and such other expenses incurred by the Insured for the preparation of any Claim that is covered under this Policy.

The cover provided under this Automatic Extension operates in addition to the Indemnity Limit. PROVIDED ALWAYS THAT such cover shall not include any Costs and Expenses (as defined in Definition 8.4 Costs and Expenses).

3.2 CONSULTANTS, SUB-CONTRACTORS AND AGENTS

The conduct of the professional activities and duties of the Professional Business shall be deemed to include, acts, errors or omissions of consultants, sub-contractors or agents of the Named Insured, while undertaking work in connection with the conduct of the professional activities and duties of the Professional Business and for which the Named Insured is liable.

We will also indemnify any consultant, sub-contractor or agent themselves, PROVIDED ALWAYS THAT:

- (a) this cover shall only apply in respect of services provided for and on behalf of the Named Insured; and
- (b) the relevant act, error or omission giving rise to the Claim occurred at the time when the consultant, sub-contractor or agent was under the Named Insured's direct control and supervision.

3.3 CONTINUOUS COVER

We agree to indemnify the Insured for any Claim, covered by Insuring Clauses A and B (1.1 Civil Liability Insuring Clause and 1.2 Costs and Expenses Insuring Clause) above, arising from any Known Circumstance (notwithstanding Exclusion 5.12 Prior or Pending Claims) if:

- (a) We were the professional liability insurer of the Insured when the Insured first knew of such Known Circumstance; and
- (b) We continued without interruption to be the Insured's professional liability insurer up until this Policy came into effect; and
- (c) had We been notified by the Insured of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy.

PROVIDED ALWAYS THAT:

- (a) the Insured agrees that it will not seek indemnity from Us in respect of the Claim or any Claim arising out of the Known Circumstance under any other policy issued by Us; and
- (b) We may reduce the amount We pay out under this provision by the amount of any prejudice We may suffer in consequence of any delayed notification to Us; and
- (c) the limit of Our liability provided under this Automatic Extension is the lesser of the limit of Our liability under the terms of the policy in force at the earlier time referred to in paragraph 3.3(c) above, or the Indemnity Limit under this Policy. The terms of this Policy otherwise apply.

3.4 COURT ATTENDANCE COSTS

For any person described in 3.4(a) or 3.4(b) below who actually attends court as a witness in connection with a Claim notified under and covered by this Policy, it is agreed that Costs and Expenses will include the following rates per day on which attendance in court has been required:

- (a) for any person who was or is a principal, partner or director of the Named Insured: \$500;
- (b) for any person who was or is an Employee of the Named Insured: \$250.

No Deductible shall apply to this Automatic Extension.

3.5 ESTATES AND LEGAL REPRESENTATIVES

We agree to include in the definition of the Insured (Definition 8.13 Insured) the estate, heirs, legal representatives or assigns of any Insured in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such Insured in respect of any civil liability of the Insured that would have been covered by Insuring Clause A and/or B (1.1 Civil Liability Insuring Clause and/or 1.2 Costs and Expenses Insuring Clause) if the Insured was alive, had capacity or was not insolvent or bankrupt. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

3.6 EXTENDED NOTIFICATION PERIOD

In the event that this Policy is not renewed or is cancelled for any reason other than non-payment of Premium then the Insured has until such time that the Insured effects another professional indemnity insurance policy either with Us or any other insurer or a period of sixty (60) days commencing on the day immediately following expiry of this Policy whichever is the lesser period, during which to notify Us of any Claim first made against the Insured in writing within such sixty (60) day or lesser period (as the case may be). PROVIDED ALWAYS THAT:

- (a) We will treat that Claim as if it had been made against the Insured and notified to Us during the immediately preceding Period of Insurance; and
- (b) coverage afforded hereunder does not reinstate or increase the Indemnity Limit or extend the Period of Insurance; and
- (c) coverage afforded hereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the Insured before the end of the Period of Insurance or the cancellation date of this Policy where this Policy has been cancelled and not before the retroactive date.

3.7 CIVIL PENALTIES

Notwithstanding Exclusion 5.5 Fines and Penalties, We agree to indemnify the Insured against Claim compensatory civil penalties imposed by law. Our total liability for the payment of compensatory civil penalties during any one Period of Insurance shall not exceed \$250,000 in the aggregate, which amount shall form part of and not increase the Indemnity Limit.

PROVIDED ALWAYS THAT We will not be liable to indemnify the Insured for any compensatory civil penalty:

- (a) for which We are legally prohibited from indemnifying the Insured under Australian law;
- (b) based upon, attributable to or in consequence of any:
 - (i) willful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
 - (ii) recklessness; or
 - (iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

3.8 FRAUD, DISHONESTY OR INTENTIONAL ACTS

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 5.6 Fraud, Dishonesty or Intentional Acts.

PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 5.6 Fraud, Dishonesty or Intentional Acts;
- (b) such indemnity shall not apply to any Claim against any Insured directly or indirectly based upon, attributable to, or in consequence of:
 - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes; or
 - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
 - (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph 3.8(b) delivered, negotiated or assigned or an electronic record of such a right.

3.9 JOINT VENTURE

If the name of a Joint Venture is included in the Schedule under "Joint Ventures", then, We will indemnify the Insured for the Insured's joint and individual civil liability, arising out of the conduct of the professional activities and duties of such Joint Venture.

If the name of the Joint Venture is not included in the Schedule under "Joint Ventures", then, We will indemnify the Insured only for the Insured's individual civil liability and not for the Insured's joint civil liability arising out of the conduct of the professional activities and duties of such Joint Venture.

PROVIDED ALWAYS THAT the business of such Joint Venture is the same as the Professional Business (as defined in Definition 8.22 Professional Business).

3.10 LOSS OF DOCUMENTS

We agree to indemnify the Insured in respect of loss of any Documents which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found.

PROVIDED ALWAYS THAT such loss of Documents:

- (a) was first discovered by the Insured during the Period of Insurance and was notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring 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 a competent person nominated by Us and agreed to by the Insured; and
- (c) shall be limited to the loss of any Documents:
 - (i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of the Professional Business; or
 - (ii) occurred whilst such Documents were in transit solely in connection with the Professional Business.

No indemnity shall be provided for any loss to Documents arising from the normal wear and tear and other gradually operating causes.

3.11 NEWLY CREATED OR ACQUIRED SUBSIDIARY

We agree to include in the definition of Insured (Definition 8.13 Insured) any Subsidiary created or acquired by the Named Insured during the Period of Insurance for a period of up to thirty (30) days (but not beyond the expiry date of the Period of Insurance) from the date of such creation or acquisition.

PROVIDED ALWAYS THAT:

- (a) this Automatic Extension will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation or acquisition of the Subsidiary; and
- (b) the business of such Subsidiary is the same as or substantially similar to the professional activities and duties of the Professional Business (as defined in Definition 8.22 Professional Business).

The Insured may apply to Us, within such thirty (30) day period, to vary this Policy to continue the cover provided by this Automatic Extension until the expiry date of the Period of Insurance. The Insured shall supply Us with such additional information relating to the new Subsidiary and pay any reasonable additional Premium as may be required by Us.

This clause shall not extend cover to any Subsidiary created or acquired by the Named Insured that is domiciled or incorporated in the United States of America or its territories or protectorates.

3.12 INVESTIGATION COSTS AND EXPENSES

We agree to pay Investigation Costs and Expenses. PROVIDED ALWAYS THAT:

- (a) We shall be entitled, at Our discretion having regard to the interests of the Insured, to appoint legal representation to represent the Insured in the investigation, examination or enquiry; and
- (b) the notice of intended investigation, examination or enquiry is served upon the Insured during the Period of Insurance and is notified to Us during the same Period of Insurance; and
- (c) in the event that a Claim for payment of Investigation Costs and Expenses is withdrawn or indemnity under this Automatic Extension is subsequently withdrawn or denied, We shall cease to advance Investigation Costs and Expenses and the Insured shall refund any Investigation Costs and Expenses advanced by Us to the extent that the Insured was not entitled to such Investigation Costs and Expenses, unless We agree in writing to waive recovery of such Investigation Costs and Expenses; and
- (d) Our total liability in respect of Investigation Costs and Expenses for all Claims made under this Automatic Extension shall not exceed \$250,000.

For the purpose of this Automatic Extension, an official investigation, examination or enquiry includes but is not limited to:

- (i) any investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry, or conducted by a regulatory authority such as the Australian Securities and Investments Commission;
- (ii) any investigation, examination or enquiry conducted by any disciplinary committee of any association, industry or professional body of which the Insured is a member.

We will not provide indemnity in respect of any industry-wide investigation, routine supervision, inspection, compliance or similar reviews of an Insured conducted by any regulatory, self-regulatory, professional, statutory or official body or institution.

3.13 PUBLIC RELATIONS EXPENSES

Where the Insured retains the services of a public relations consultant for the sole purpose of protecting the Insured's reputation that has been brought into question as a direct result of a Claim covered by this Policy, We agree to pay any reasonable fees, costs and expenses of such public relations consultant. PROVIDED ALWAYS THAT:

- (a) the Insured notifies Us within twenty-eight (28) days of first becoming aware of the Insured's reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
- (b) We have given prior written consent (which consent shall not unreasonably be withheld) to retain the services of such public relations consultant; and
- (c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$50,000.

3.14 RUN-OFF COVER UNTIL EXPIRY OF THE PERIOD OF INSURANCE

We agree that in the event that an Insured entity ceased or ceases to exist or operate or be a Subsidiary or became or becomes consolidated with, merged into or acquired by any other entity either before or during the Period of Insurance then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Period of Insurance.

PROVIDED ALWAYS THAT such coverage shall only apply in respect of Claim(s) arising from any act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

3.15 SEVERABILITY

We agree that where any Insured:

- (a) failed to comply with the duty of disclosure contained in 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 any conditions of this Policy;

the right of any other Insured to indemnity under this Policy shall not be prejudiced thereby. PROVIDED ALWAYS THAT this Automatic Extension shall only apply when:

- (i) such other Insured shall be entirely innocent of and has no prior knowledge of any such conduct; and
- (ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct.

NOTWITHSTANDING the above, any fact or knowledge possessed by any past or present partner, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to the Named Insured.

3.16 PREVIOUS BUSINESS

We agree to indemnify any principal, partner or director of the Insured for Claims resulting from professional services they performed prior to joining the Insured.

This Automatic Extension will only apply if:

- (a) the professional services were performed in the same profession as the Professional Business of the Insured; and
- (b) there were no more than ten (10) partners or directors in the past business in which the principal, partner or director practiced; and

- (c) the principal, partner or director of the Insured does not have the benefit of cover under any other insurance or indemnity.

Notwithstanding Section 2 - Retroactive Date Clauses 2.1 Unlimited Retroactive Cover and 2.2 Limited Retroactive Cover, the retroactive date for this Automatic Extension is limited to the commencement date of the past business in which the principal, partner or director practiced.

3.17 EMERGENCY COSTS AND EXPENSES

We agree to pay Costs and Expenses incurred by the Insured prior to obtaining Our consent. PROVIDED ALWAYS THAT:

- (a) Our consent is obtained within thirty (30) days of the first of such Costs and Expenses being incurred; and
- (b) We are only liable to indemnify the Insured for that part of the Insured's liability in respect of each Claim and Costs and Expenses in excess of the Deductible; and
- (c) if We subsequently refuse to pay under the Policy, the Insured must reimburse Us for any Costs and Expenses that We have paid in advance, according to their respective rights and interests.

The sub-limit of liability for all such payments under this Automatic Extension is \$100,000. This sub-limit forms part of, and is not payable in addition to, the Indemnity Limit.

3.18 LOSS MITIGATION

We agree to cover the Insured for the direct costs and expenses incurred by the Insured with Our written consent (which shall not be unreasonably withheld or delayed) in taking reasonable and necessary steps to rectify or to mitigate the effects of, any act, error or omission of the Insured in the Professional Business which is first discovered during the Period of Insurance, which We consider would otherwise result in a Claim where such steps would be taken.

The sub-limit of liability for all such payments under this Automatic Extension is \$100,000 in respect of any one matter and \$200,000 in the aggregate for all such matters.

3.19 REINSTATEMENT OF INDEMNITY LIMIT

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

- (a) indemnity under this Policy shall not exceed the Indemnity Limit 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 Indemnity Limit stated in the Schedule; and
- (c) where there is additional insurance in place in excess of the Indemnity Limit of this Policy, any indemnity under this Automatic Extension is limited to the sums which are not covered by the additional insurance.

SECTION 4 – OPTIONAL EXTENSIONS

PREAMBLE

The following Optional Extensions are not included in the Policy unless shown as included in the Schedule. We shall provide indemnity as is available under each Optional Extension PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- (b) the inclusion of any Optional Extension shall not increase the Indemnity Limit; and
- (c) the inclusion of any Optional Extension shall be at Our discretion.

4.1 FIDELITY

Notwithstanding Exclusion 5.6 Fraud, Dishonesty or Intentional Acts We agree to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured. PROVIDED ALWAYS THAT:

- (a) such loss is first discovered by the Insured during the Period of Insurance and is notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned; and
- (c) We shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred; and
- (d) the Insured shall bear the burden of adducing proof to Our reasonable satisfaction to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and We will be under no obligation to provide indemnity to the Insured until such time as We are satisfied that such loss has, in fact, been sustained; and
- (e) all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single Deductible shall apply to such loss; and
- (f) Our liability for each loss under this Optional Extension and Our aggregate liability for all losses under this Optional Extension shall not exceed \$250,000.

4.2 MULTI-YEAR RUN-OFF AFTER MERGER, TAKEOVER, SALE, WINDING UP OF NAMED INSURED

If the Named Insured is subject to a merger, takeover, sale or winding up, then, We agree to extend the Period of Insurance up to seven (7) years immediately following the expiry of the Period of Insurance.

PROVIDED ALWAYS THAT:

- (a) this Optional Extension will only apply with respect to any Claim(s) arising from any act, error or omission occurring prior to the effective date of such merger, takeover, sale or winding up; and
- (b) on such terms and conditions, and for such additional Premium as We may reasonably require.

SECTION 5 – EXCLUSIONS

We shall not be liable under this Policy to provide indemnity in respect of any:

5.1 AIRCRAFT, MOTOR VEHICLES AND WATERCRAFT

Claim based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft, motor vehicle or watercraft by an Insured.

5.2 CONTRACTUAL LIABILITY

Claim based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of any contractual undertaking, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contractual undertaking, warranty, guarantee or indemnity.

5.3 ASBESTOS

Claim which would not have arisen but for the existence of asbestos.

5.4 DIRECTORS' AND OFFICERS' LIABILITY OR TRUSTEES' LIABILITY

Claim based upon, attributable to, or in consequence of any activities as a trustee, director, secretary or officer unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

5.5 FINES AND PENALTIES

Claim for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law.

5.6 FRAUD, DISHONESTY OR INTENTIONAL ACTS

Claim based upon, attributable to, or in consequence of:

- (a) any dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- (b) any act or omission of an Insured or their consultants, sub-contractors, or agents with the intention of causing a third party loss, damage or injury or committed with a reckless disregard for the consequences thereof; or
- (c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

PROVIDED ALWAYS THAT this exclusion shall not apply unless and until:

- (i) the Insured makes an admission in writing of any conduct described in Clauses 5.6(a), 5.6(b) and/or 5.6(c) above; or
- (ii) it has been established through a judicial process that the Insured has committed any conduct described in Clauses 5.6(a), 5.6(b) and/or 5.6(c) above.

5.7 JURISDICTIONAL LIMITS

- (a) Claim brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) Claim or liability arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

5.8 RADIOACTIVITY AND NUCLEAR HAZARDS

Claim or liability arising from or directly or indirectly attributable to or in connection with any:

- (a) loss or destruction of or damage to any property whatsoever, or any resultant loss or expenses whatsoever; or
- (b) consequential loss; or
- (c) legal liability of whatsoever nature;

directly or indirectly caused by or contributed to by or arising from:

- (i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (ii) the radioactive, toxic, explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

5.9 OBLIGATIONS TO WORKERS

Claim based upon, attributable to, or in consequence of:

- (a) Bodily Injury of any Worker of an Insured or damage to or destruction of any property of any Worker of an Insured, including loss of use of property, arising out of, or in the course of, their employment; or
- (b) any actual or alleged Employment Practice Breach (as defined in Definition 8.11 Employment Practice Breach).

For the purposes of Exclusions 5.9(a) and 5.9(b) only, the term "Worker" means any person employed by, or who is deemed to be employed by, the Insured pursuant to any Workers' Compensation Law.

5.10 OCCUPIER'S LIABILITY

Claim based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an Insured.

5.11 POLLUTION

Claim arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of Pollutants into or upon land, the atmosphere or any water course or body of water. However, this exclusion will not apply if the pollution results from an error or omission in design and/or advice and/or specification in the provision of the Professional Business.

5.12 PRIOR OR PENDING CLAIMS

Claim:

- (a) first made, threatened or intimated against or to the Insured prior to the Period of Insurance; or
- (b) relating to any matter disclosed or notified to Us or any other insurer prior to the Period of Insurance as being a Claim or a Known Circumstance; or

- (c) relating to any litigation that was in progress or pending prior to the Period of Insurance; or
- (d) relating to any fact or Known Circumstance.

5.13 PRODUCT LIABILITY

Claim based upon, attributable to, or in consequence of the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the Insured, except where such Claim arises solely and directly from any advice, design or specification prepared by the Insured in the conduct of the professional activities and duties of the Professional Business.

5.14 RELATED OR ASSOCIATED ENTITIES

Claim brought or maintained by or on behalf of an Insured or any Subsidiary or parent of an Insured.

5.15 TERRITORIAL LIMITS

Claim based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

5.16 WAR/CIVIL WAR/TERRORISM

Claim or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (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; or
- (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; or
- (d) any action taken in controlling, preventing, suppressing or in any way relating to 5.16(a), 5.16(b) and/or 5.16(c) above.

For the purposes 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.

5.17 TRADING DEBTS

Claim directly or indirectly based upon, attributable to, or in consequence of:

- (a) any trading debt incurred by an Insured or any guarantee given by an Insured for a debt; or
- (b) the refund of the Insured's professional fees or charges (by way of damages or otherwise).

5.18 RESTRICTIVE TRADE PRACTICES

Claim directly or indirectly based upon, attributable to, or in consequence of any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

5.19 SANCTIONS

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.

5.20 ELECTRONIC DATE RECOGNITION

Claim directly or indirectly arising out of or relating to:

- (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.

5.21 CYBER AND DATA PROTECTION LAW EXCLUSION

Claim directly or indirectly arising out of or relating to:

- (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.

5.22

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 Policy shall not apply to Data.

SECTION 6 – CLAIMS CONDITIONS

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 MITIGATION AND CO-OPERATION

- (a) If the Insured, either prior to or during the Period of Insurance becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder. Costs and expenses incurred by the Insured in compliance with this Clause 6.1(a) shall be at the Insured's cost, unless otherwise agreed in writing by Us.
- (b) The Insured shall frankly and honestly disclose to Us all relevant information and, in addition shall 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. Costs and expenses incurred by the Insured in compliance with this Clause 6.1(b) shall be paid by Us in accordance with Automatic Extension 3.1 Claims Preparation Costs. Costs and expenses in excess of the cover provided by Automatic Extension 3.1 Claims Preparation Costs shall be borne by the Insured.
- (c) Costs and expenses incurred by Us to enable Us to determine Our liability under this Policy shall be at Our own cost.

6.2 DEFENCE AND SETTLEMENT

- (a) The Insured shall not settle any Claim, incur any Costs and Expenses or Investigation Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without Our written consent, such consent not to be unreasonably withheld. We shall not be liable for any settlement, Costs and Expenses, Investigation Costs and Expenses, admission, offer or payment, or assumed obligation to which We have not consented in writing.
- (b) We shall be entitled if We so desire, to take over and conduct, in the name of the Insured, the defence or settlement of any Claim at any time. In the event that this occurs, We will then have regard to the interests of the Insured and have control of the Claim.
- (c) If We retain lawyers to conduct, in the name of the Insured, the investigation, defence or settlement of any Claim, those lawyers will only act on behalf of Us in relation to any issue regarding the Insured's entitlement to indemnity from Us and they will not act on the Insured's behalf in respect of any such issue. Any information that is received by lawyers retained by Us in the course of investigating, defending or settling any Claim against the Insured can be provided to Us and relied upon by Us in relation to any issue that may arise regarding Our liability to indemnify the Insured. We have a common interest with the Insured and with appointed legal advisers in the investigation, defence and settlement of any matter notified to Us under the Policy (Common Interest).

All confidential information provided to Us (including information which is subject to legal professional privilege), and/or to the legal advisers We appoint, by or on behalf of the Insured, which the Insured hereby irrevocably consents to appointed legal advisers providing to Us, is so provided on the basis that:

- (i) subject to 6.2(c) (iii) below, the information is provided to Us for that Common Interest purpose, is to be kept confidential and will not be further disclosed without the written consent of the Insured; and
- (ii) in respect of confidential information which is subject to legal professional privilege, the Insured does not waive legal professional privilege; and
- (iii) the information may be disclosed by Us to Our legal advisers and reinsurers on the basis that the above conditions apply to those persons' use of such information.

- (d) The lawyers retained by Us to conduct the investigation, defence or settlement of any Claim, may provide advice to Us on any issue regarding Our liability to indemnify the Insured and, whilst doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both Us and the Insured.
- (e) The Insured agrees that all communications between Us and lawyers retained by Us to act in the conduct of the investigation, defence or settlement of any Claim which relate to the Insured's entitlement to indemnity from Us are privileged as between Us and the lawyers and the Insured agrees that it is not entitled, under any circumstances, to access or obtain any such communications.
- (f) If any actual or apparent conflict arises between Our interests and the Insured's interests, the lawyers retained by Us to conduct the investigation, defence or settlement of any Claim may cease acting on behalf of the Insured and may continue to act on behalf of Us in relation to any dispute between Us and the Insured with respect to the Insured's entitlement to indemnity from Us.

6.3 INSURED'S RIGHT TO CONTEST

In the event that We recommend a settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim. PROVIDED ALWAYS THAT Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent, such consent not being unreasonably withheld, up to the date of such election, less the Deductible.

6.4 REPORTING AND NOTICE

- (a) The Insured shall give to Us written notice as soon as practicable of any Claim made against an Insured PROVIDED ALWAYS THAT such written notice is given to Us during the Period of Insurance in which the Claim is made.
- (b) Notice of any Claim shall be sent to Procover.

6.5 SENIOR COUNSEL CLAUSE

- (a) We shall not require the Insured 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.
- (b) In formulating such advice, Senior Counsel shall 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.
- (c) The cost of such Senior Counsel's opinion shall be paid by Us in addition to the Indemnity Limit.

6.6 SUBROGATION AND ALLOCATION OF THE PROCEEDS OF RECOVERIES

In respect of any Claim covered by this Policy, and without limiting Our rights at law, We shall be subrogated to all the Insured's rights of recovery, and the Insured shall execute all papers required and shall 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.

The Insured shall not, without first obtaining Our written consent, do anything or fail to do anything which excludes, limits or prejudices Our rights of subrogation. We will not withhold Our consent unreasonably. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.

Should the Insured incur any legal liability which is not covered by this Policy:

- (a) due to the application of any Deductible; and/or
- (b) where the amount(s) of any judgment(s) or settlement(s) exceed(s) the Indemnity Limit or any applicable sub-limit;

the Insured will be entitled to the first call on the proceeds of all recoveries made, by either the Insured or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to Our reimbursement.

6.7 ALLOCATION

To the extent that a Claim comprises Covered Matters and Uncovered Matters, We will use best endeavours to agree a fair allocation between Covered Matters and Uncovered Matters having regard to the relative legal and financial exposure attributable to the Covered Matters and Uncovered Matters.

This allocation will apply to Costs and Expenses.

Any dispute between Us and the Insured on the allocation will be resolved by a Senior Counsel that We and the Insured both agree to instruct or in the absence of an agreement, as appointed by the President of the Bar Association in the state or territory of the first address of the Insured shown on the Schedule or if no address is shown there, as shown on the Proposal.

Any allocation between Covered Matters and Uncovered Matters as determined by Senior Counsel will apply retrospectively to the Costs and Expenses paid by Us to the Insured notwithstanding any prior payment on a different basis, unless otherwise agreed.

The costs of Senior Counsel's opinion will form part of the Claim Investigation Costs. For the purposes of this condition:

- (a) Covered Claim means that part of a Claim for which We provide cover;
- (b) Uncovered Claim means that part of a Claim for which We do not provide cover.

6.8 FOREIGN CURRENCY

All amounts referred to in this Policy are in Australian Dollars.

If the Insured incurs liability to settle any Claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to the Insured (or some other person at the Insured's direction) the indemnity in respect of such award or settlement subject always to the Indemnity Limit.

SECTION 7 – GENERAL CONDITIONS

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.

7.1 ALTERATION TO RISK

The Insured shall give to Us written notice as soon as practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

- (a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or
- (b) any material change in the nature of the professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk We shall be entitled to cancel this Policy in accordance with the *Insurance Contracts Act 1984* (Cth). PROVIDED ALWAYS THAT in the event that the Insured should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any Claim hereunder because of such bankruptcy or insolvency.

7.2 ASSIGNMENT OF INTEREST

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of Us.

7.3 CANCELLATION

- (a) The Insured may cancel this Policy at any time by notifying Us in writing.
- (b) We may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984* (Cth).
- (c) In the event of cancellation by the Insured or by Us, We will allow a pro-rata refund of Premium for the unexpired Period of Insurance less any non refundable duties or charges together with any agency fee charged by Procover unless there has been a notification of facts which may give rise to a Claim, or of any Claim during the Period of Insurance, in which case no refund shall be given.

7.4 DEDUCTIBLE

- (a) In respect of each Claim made against the Insured (or each loss or claim incurred by the Insured in respect of Automatic Extensions 3.1 Claims Preparation Costs, 3.10 Loss of Documents and 3.12 Investigation Costs and Expenses) the amount of the Deductible shall be borne by the Insured at their own risk and We shall only be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- (b) In the event of a Claim by the Insured under this Policy, the Insured shall, if directed by Us, pay to Us (or as is directed by Us) the Deductible within fourteen (14) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle Us to deduct such amount from any amount(s) required to settle any Claim or judgment, order, or any other payment to be made by Us under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Costs and Expenses, Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent up to the date of such failure, less the Deductible.

- (c) Where We have elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within fourteen (14) working days from the date of such payment, reimburse Us for such payment.
- (d) In respect of any Claim (or any loss or claim) where the amount of the Claim (or any loss or claim) is less than the amount of the Deductible, the Insured shall bear all Costs and Expenses associated therewith unless We shall have agreed to meet such Costs and Expenses pursuant to 1.2 Costs and Expenses Insuring Clause.
- (e) Where the Deductible is expressed in the Schedule to be inclusive of Costs and Expenses then the Insured will pay all Costs and Expenses, up to the amount of the Deductible, incurred by Us pursuant to the engagement of advisers considered necessary by Us to determine the liability of the Insured and to resolve the Claim (or loss or claim).
- (f) Any Costs and Expenses incurred by Us to determine whether We have a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by Us.

7.5 INDEMNITY LIMIT

Subject to 1.2 Costs and Expenses Insuring Clause and 3.1 Claims Preparation Costs Our total liability under the Policy in any one Period of Insurance for any one Claim and in the aggregate including Costs and Expenses shall not exceed the Indemnity Limit.

7.6 MULTIPLE CLAIMS

- (a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- (b) Where a single act, error, or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under this Policy.

7.7 POLICY CONSTRUCTION AND INTERPRETATION

- (a) The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.
- (b) 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.
- (c) Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a Joint Venture (whether incorporated or unincorporated), a partnership and a trust.

7.8 SERVICE OF SUIT

The Insurer(s) agree that:

- (a) 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;
- (b) 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);

- (c) 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.

7.9 SEVERAL LIABILITY

The liability of an Insurer under this contract is several and not joint with other Insurer 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.

7.10 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 8 – 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.

8.1 BODILY INJURY

“Bodily Injury” shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

8.2 CLAIM

“Claim” shall mean:

- (a) the receipt by the Insured of any written or oral demand for compensation made by a third party against the Insured; or
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, crossclaim, counterclaim or third or similar party notice served upon the Insured which seeks compensatory relief made by a third party against the Insured; or
- (c) for the purpose of Automatic Extension 3.10 Loss of Documents only, any losses described in that Clause arising from loss of any Documents; or
- (d) for the purpose of Automatic Extension 3.12 Investigation Costs and Expenses only, any attendance by the Insured at an investigation, examination or enquiry.

8.3 COMPUTER SYSTEM

“Computer Systems” 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.

8.4 COSTS AND EXPENSES

“Costs and Expenses” shall mean the reasonable legal costs and other expenses (including but not limited to legal counsels’ fees and experts’ fees) incurred by or on behalf of the Insured with Our prior written consent (which shall not be unreasonably withheld) or by Us in the investigation, defence or settlement of a Claim, or in bringing or defending appeals in connection with a Claim.

8.5 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.

8.6 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.

8.7 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).

8.8 DEDUCTIBLE

“Deductible” shall mean the amount shown as the Deductible in the Schedule which the Insured must pay to each Claim. It is described in more detail in General Condition 7.4 Deductible.

8.9 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 electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

8.10 EMPLOYEE

“Employee” shall mean any person employed under a contract of service or apprenticeship.

8.11 EMPLOYMENT PRACTICE BREACH

“Employment Practice Breach” shall mean any employment practices liability, including but not limited to:

- (a) employment related discrimination against any Worker or applicant for employment whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- (b) wrongful dismissal of any Worker;
- (c) workplace harassment whether sexual or otherwise, including bullying, of any Worker;
- (d) breach of any oral or written employment contract;
- (e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to any Worker;
- (f) failure to provide or adhere to adequate employment policies or procedures;
- (g) defamation arising from employment related matters;
- (h) employment related invasion of privacy;
- (i) false or misleading advertising or representation involving terms and conditions of employment;
- (j) violation of any Federal, State or local statute or regulation governing employment practices; and/or
- (k) denial of natural justice to any Worker concerning employment.

For the purpose of this Definition, the term “Worker” means any person employed by, or is deemed to be employed by, the Insured pursuant to any Workers’ Compensation Law.

8.12 INDEMNITY LIMIT

“Indemnity Limit” shall mean the limit of Our liability under this Policy as specified in the Schedule. It is described in more detail in General Condition 7.5 Indemnity Limit.

8.13 INSURED

“Insured” shall mean:

- (a) the Named Insured;
- (b) any predecessor in business of the Named Insured;
- (c) any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;

- (d) any person who is, during the Period of Insurance, an Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured;
- (e) any former principal, partner, director or Employee of the Named Insured, but only in respect of work performed while such person was a principal, partner, director or Employee of the Named Insured; or
- (f) any consultant, sub-contractor or agent but only to the extent that they are indemnified under Automatic Extension 3.2 Consultants, Sub-contractors and Agents.

8.14 INVESTIGATION COSTS AND EXPENSES

“Investigation Costs and Expenses” shall mean reasonable legal costs and other expenses incurred by or on behalf of the Insured with Our prior written consent (such consent not to be unreasonably withheld) or by Us arising out of any attendance by an Insured at or any response by an Insured to any official investigation, examination or enquiry that relates to the Insured’s conduct of the professional activities and duties of the Professional Business.

“Investigation Costs and Expenses” does not include any fine, penalty or order for the payment of monetary compensation.

8.15 JOINT VENTURE

“Joint Venture” shall mean the entering into of a venture (by whatever name called) which the Named Insured carries on together with any other person, company, corporation, partnership or other entity not otherwise deemed to be an Insured under this Policy.

8.16 KNOWN CIRCUMSTANCE

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

- (a) an Insured knew at any time before the Period of Insurance or any relevant amendment or endorsement of the Policy; or
- (b) a reasonable person in the Insured’s professional position would have thought, at any time before this Policy began or before any relevant amendment or endorsement of the Policy;

might result in someone making a Claim against the Insured that might be covered by this Policy.

For the purposes of this Definition 8.16 Known Circumstance, “Insured” does not include “Employee” (as defined in Definition 8.10 Employee) or any consultant, sub-contractor or agent (as referred to in Sub-clause (f) of Definition 8.13 Insured).

8.17 NAMED INSURED

“Named Insured” shall mean the person, persons, partnership, company, corporation or other entity specified as the Named Insured in the Schedule.

8.18 PERIOD OF INSURANCE

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

8.19 POLICY

“Policy” shall mean:

- (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 Insurance; and
- (d) the Proposal.

8.20 POLLUTANTS

“Pollutants” shall mean any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours, fumes, soot, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

8.21 PREMIUM

“Premium” shall mean the premium specified in the Schedule or in any endorsement to the Schedule.

8.22 PROFESSIONAL BUSINESS

“Professional Business” shall mean the business which is conducted by the Named Insured as specified in the Schedule.

If the Named Insured should change its name and there is no other change which materially alters the risk, the Professional Business will continue to be covered by this Policy.

8.23 PROPOSAL

“Proposal” shall mean the written proposal made by the Insured to Us containing particulars and statements which, together with other information provided by the Insured, are considered as incorporated herein.

8.24 SCHEDULE

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

8.25 SENIOR COUNSEL

“Senior Counsel” shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

8.26 SUBSIDIARY

“Subsidiary” shall mean:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- (b) any entity over which a Named Insured is in a position to exercise effective direction or control.

8.27 TAXABLE PERCENTAGE

“Taxable Percentage” is the Insured’s entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that Premium.

8.28 WE, US, OUR, INSURER(S)

“Us/We/Our/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.

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.

PROC SCTP PI 0721 v2

