

PROCOVER PROFESSIONAL INDEMNITY (NEGLIGENCE) INSURANCE

Policy Wording

Preparation Date 1 May 2024



PROCOVER
UNDERWRITING AGENCY

Procover Professional Indemnity (Negligence) Insurance Policy Wording

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IMPORTANT INFORMATION

Please read the following information.

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

- 'You' or 'Your' have the same meaning as the 'Insured' as defined in the Definitions section of the Policy;
- 'We', 'Us', 'Our' have the same meaning as the 'Insurer(s)' as defined in the Definitions section of the Policy.

ABOUT LLOYD'S

Certain underwriters at Lloyd's 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.

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) 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

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

OUR CONTRACT WITH YOU

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide. The Policy consists of:

- this Policy wording which tells You what is covered, sets out the Claims procedure, exclusions and other terms and conditions of cover;
- the Proposal, which is the information You provide to Us when applying for insurance cover;

- Your most current Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy;
- any endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

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

YOUR DUTY OF DISCLOSURE

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

You have this duty until We agree to insure You.

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

You do not need to tell Us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

If You do not tell Us something

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a Claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a Claim and treat the contract as if it never existed.

PRIVACY STATEMENT

In this Privacy Statement the use of 'We', 'Us' and 'Our' means the Insurer(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. See the Privacy Policies/Notices set out below for further information.

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 certain underwriters at Lloyd's Privacy Notice at <https://www.lloyds.com/help/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: ldraustralia@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.

CHANGES OF LAW

If any statute, Act or legislation relevant to the construction of this Policy is amended or replaced, this Policy shall be read as though the amended or new statute, Act or legislation were incorporated in it. If this produces any ambiguity, this document shall be construed so as to give effect to the intentions of the parties at the time it was executed.

CLAIMS – MADE AND NOTIFIED INSURANCE

This Policy provides cover on a Claims – made and notified basis. This means that the Policy only covers Claims first made against You during the period the Policy is in force and notified to 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.

SECTION 1 – INSURING CLAUSES

Subject to the information that the Insured provides in the Proposal and payment of the Premium, the Insurer(s) agree to provide indemnity to the Insured subject to the terms and conditions of the Policy.

1.1 INSURING CLAUSE

The Insurer(s) agree to indemnify the Insured up to the Limit of Indemnity against any Claim(s) for which the Insured may become legally liable and which is first made against the Insured and notified to the Insurer(s) during the Period of Insurance in respect of the professional conduct of the Insured's Business Activity within the Territorial Limits, where the Claim alleges:

- a) negligence or breach of duty of care;
- b) negligent misstatement or negligent misrepresentation;
- c) infringement of intellectual property rights including copyright, patent, registered design right or breach or misuse of confidential information;
- d) any unintentional defamation;
- e) loss of Documents lodged with or entrusted to the Insured for the purpose of storage or safe keeping provided always that the amount of any Claim for costs, charges and expenses is supported by bills and/or accounts which is subject to approval by some competent person to be nominated by the Insurer(s) with approval of the Insured and no indemnity is provided for any loss brought about by wear, tear and other gradually operating causes;
- f) dishonesty of any employee, but excluding any Claim resulting from the dishonest, fraudulent, criminal or malicious acts or omissions committed after the Insured discovered, or could reasonably have discovered or suspected, improper conduct by the employee. No indemnity will be provided to any person committing or condoning any dishonest, fraudulent, malicious or criminal acts or omissions. The Insurer(s) will not indemnify the Insured for any Claims for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
- g) any breach of the consumer protection provisions of the *Competition and Consumer Act 2010* (Cth) and corresponding consumer protection provisions of the Australian state and territories Fair Trading legislation provided always that:
 - i) this extension of indemnity shall not include Claims made under the penal or criminal provisions of those Acts or legislation;
 - ii) such conduct arises from actual or alleged breach of professional duty as defined in 1.1 Insuring Clause above.

1.2 INSURING CLAUSE

The Insurer(s) agree to indemnify the Insured for Defence Costs incurred by the Insured, with Our written consent, in defence or settlement of any Claim(s) covered under 1.1 Insuring Clause above. The Insurer(s) will not unreasonably withhold written consent to the Insured incurring Defence Costs.

SECTION 2 – AUTOMATIC EXTENSIONS

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 NEWLY CREATED OR ACQUIRED ENTITY OR SUBSIDIARY

The Insurer(s) agree to indemnify any entity or Subsidiary undertaking the same or similar Business Activity which is acquired or created during the Period of Insurance for a period of up to forty-five (45) days (but never beyond the expiry date of the Period of Insurance) but only in respect of any negligence or breach of duty of care, negligent misstatement or negligent misrepresentation committed subsequent to the date of acquisition or creation (unless otherwise agreed in writing by the Insurer(s)) provided always that notification of any such acquisition or creation of the entity or Subsidiary after inception of this Policy shall be given in writing within forty-five (45) days to the Insurer(s) together with appropriate underwriting information as required by the Insurer(s) who will be at liberty to charge an additional premium and impose special conditions in respect of such entity or Subsidiary.

For the purpose of this clause Subsidiary shall mean:

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

2.2 JOINT VENTURE

The Insurer(s) agrees to indemnify the Insured for their joint and several liability, including vicarious liabilities, arising from the operation or activities of any joint venture provided always that this cover will only apply to Claim(s) covered by 1.1 Insuring Clause 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.

2.3 RUN-OFF OF DIVESTED ENTITIES

Where a covered entity or subsidiary ceases to exist or to operate or is acquired by another, then the Insurer(s) agrees that the coverage provided under this Policy with respect to that entity of the Insured will continue until the expiry date of the Period of Insurance, provided always that such coverage will only apply in respect of the Insured's liability arising out of any Business Activity happening prior to the effective date that such entity or subsidiary ceased to exist or to operate or was acquired by another entity, unless otherwise agreed by the Insurer(s) in writing.

2.4 COSTS OR EXPENSES – OFFICIAL ENQUIRIES

The Insurer(s) agrees to indemnify the Insured for the costs incurred by the Insurer(s), or the reasonable costs incurred by the Insured with the Insurer(s) written consent, of the Insured's legal representation at any inquiry (including any coronial inquiry or any inquiry under the disciplinary rules of a professional association of which the Insured is a member) or other similar processes relating to or connected with the Insured's Business Activity, which the Insured is legally compelled to attend provided always that:

- a) the process is ordered or commissioned during the Period of Insurance;
- b) the Insurer(s) shall be entitled to nominate the legal representation;
- c) the Insured having notified the Insurer(s) in writing within the Period of Insurance and within twenty-eight (28) days of having received notice of the inquiry; and
- d) the aggregate liability of the Insurer(s) for all Claim(s) under this clause shall not exceed \$100,000.

SECTION 3 – OPTIONAL EXTENSIONS

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 REINSTATEMENT OF LIMIT OF INDEMNITY

The Insurer(s) 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 does not exceed the Limit of Indemnity as 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 does not exceed an amount equal to twice the Limit of Indemnity as stated in the Schedule.

3.2 CONTRACTORS

This Policy is extended to indemnify the Insured in respect to Claims arising from any negligence or breach of duty of care, negligent misstatement or negligent misrepresentation of a Contractor in the professional conduct of the Insured's Business Activity within the Territorial Limits. This Optional Extension does not alter the Definition of the Insured.

SECTION 4 – RETROACTIVE DATE

4.1 UNLIMITED RETROACTIVE DATE

“Unlimited Retroactive Date” – 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 to Claim(s) 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. This is subject to:

- a) the Insured having continuous insurance cover prior to or from the date the act(s), error(s) or omission(s) that gave rise to such Claim(s) occurred, to the inception of the current Policy; and
- b) the Insured providing evidence of prior policies to the satisfaction of the Insurer(s).

4.2 LIMITED RETROACTIVE DATE

“Limited Retroactive Date” – where a Retroactive Date is specified in the Schedule, then this Policy only provides indemnity in respect of Claim(s) arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

SECTION 5 – DEFINITIONS

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

5.1 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.

5.2 BUSINESS ACTIVITY

Business Activity means the activities shown in the Schedule, which the Insured performs in the ordinary course of business for which the Insured is remunerated or other activities necessary to its conduct.

5.3 CLAIM

Claim means an assertion of a right to compensation or damages from the Insured, including by any civil proceeding or demand against the Insured. Where two, or a series of, Claims arise from a circumstance or occurrence or a series of circumstances or occurrences consequent upon or attributable to one source or original cause, they are deemed to be one Claim for the purpose of the Limit of Indemnity and the Excess applicable under the Policy.

5.4 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.

5.5 CONTRACT

Contract means a written contract between the Insured and a Contractor in regards to the Insured's Business Activity and does not include any form of verbal agreement unless it is subsequently reduced to a formal written Document and signed by the Insured and the Contractor.

5.6 CONTRACTOR

Contractor means a person or other entity contracted to the Insured and engaged in the Insured's Business Activity pursuant to a Contract between the Insured and that person or other entity.

5.7 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.

5.8 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.

5.9 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).

5.10 DEFENCE COSTS

Defence Costs means reasonable costs and expenses for which the Insured is legally liable and/or which are incurred by the Insured with the Insurer(s) consent and agreement in the investigation, settlement or defence of a Claim covered by this Policy.

5.11 DOCUMENT

Document means agreements, plans, records, deeds, books, letters, policies, documents or forms of any description whether written, printed or reproduced by any other method or means excluding bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.

5.12 EXCESS

Excess means the amount stated in the Schedule which the Insured must bear in respect of each Claim inclusive of Defence Costs, before the Insurer(s) are liable to make any payment under this Policy.

5.13 INCEPTION DATE

Inception Date means the date on which the Insured's insurance cover with the Insurer(s) commences, as specified in the Schedule.

5.14 INSURED

Insured means:

- a) the person, persons, partnership, company, corporation, statutory authority or other entity specified in the Schedule as Insured;
- b) any predecessor in business of any person or entity in a);
- c) any person who is, was, becomes or ceases to be a principal, partner, director, officer or employee of any person, persons, partnership, company, corporation, statutory authority or other entity specified in the Schedule as the Insured, but in each case solely in respect of a liability arising from activity for and on behalf of that entity; and
- d) any executor, administrator, heir or trustee of any person in a), b), or c).

5.15 INSURER(S)

Insurer(s) means certain underwriters at Lloyd's.

Note: You can obtain further details of the Insurer(s) from Procover upon request.

5.16 LIMIT OF INDEMNITY

Limit of Indemnity means the maximum amount payable by the Insurer(s) under this Policy as stated in the Schedule, inclusive of claimants' costs, fees, expenses and Defence Costs, irrespective of the number, quantum or timing of Claims, or the number of Insureds claiming on the Policy.

5.17 PERIOD OF INSURANCE

Period of Insurance means from the Inception Date to the date on which insurance cover ceases, as stated in the Schedule.

5.18 POLICY

Policy means:

- a) this document (the Policy wording);
- 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.

5.19 PREMIUM

Premium means the amount payable by the Insured for this Policy as stated in the Schedule.

5.20 PRODUCT

Product means any tangible property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured.

5.21 PROPOSAL

Proposal means the Proposal for insurance provided under this Policy including any documentation or information submitted to the Insurer(s) by the Insured.

5.22 SCHEDULE

Schedule means the schedule of insurance issued by the Insurer(s) specifying inter alia the Policy number, Premium, the Insured's name, the Insured's Business Activity, the Limit of Indemnity, the Retroactive Date and the Period of Insurance.

5.23 TERRITORIAL LIMITS

Territorial Limits means Worldwide, excluding the United States of America or the Dominion of Canada.

SECTION 6 – EXCLUSIONS

6.1 THE FOLLOWING EXCLUSIONS APPLY TO THE ENTIRE POLICY

The Insurer(s) shall not indemnify the Insured in respect of any Claim:

- a) involving injury to any person or damage to property, unless it results directly from the professional conduct of the Insured's Business Activity (except in so far as indemnified by the loss of Documents cover);
- b) made against the Insured by or on behalf of any entity in which the Insured exercises a financial or managerial interest;
- c) arising from the Insured's insolvency or impecuniosity or lack of financial resources;
- d) arising from services undertaken prior to the Insured's incorporation;
- e) in respect of any fees claimed back or withheld by a customer of the Insured arising from non-performance of the Insured's contractual obligations, unless such fees form part of a compromise settlement of a Claim;
- f) arising from the recommendation or specification of any goods or Products where their use is not in accordance with the manufacturer's specification;
- g) arising from the manufacture, installation, maintenance or servicing of any Product sold, supplied or distributed by the Insured;
- h) arising from obscenity, blasphemy or pornographic material;
- i) alleging any neglect, act, error or omission committed or alleged to have been committed occurring or alleged to have occurred prior to the Retroactive Date stated in the Schedule;
- j) first made before the Inception Date;
- k) arising from a potential Claim or circumstance known to the Insured and which the Insured knew or ought reasonably to have known, prior to inception of this Policy, might result in a Claim against the Insured;
- l) or potential Claim or circumstance which has, or ought to have, been notified under any other insurance policy prior to the Inception Date;
- m) made against any Insured by any other Insured in any capacity whatsoever;
- n) in relation to any fines, penalties, aggravated, punitive or exemplary damages or other non compensatory damages, including but not limited to multiplications of compensatory awards or damages;
- o) or potential Claim or circumstance in any way connected with the United States of America or Canada or their territories or laws;
- p) based on or arising out of liquidated damages clauses, penalty clauses or performance warranties, unless proven by the Insured that such liability would have attached in the absence of such clauses or warranties;
- q) 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;
- r) directly or indirectly caused by or contributed to by or arising from:
 - i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

- s) directly or indirectly arising from or in any way connected with asbestos;
- t) directly or indirectly caused or occasioned by or happening through or in consequence of any Act of Terrorism;
- u) directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war, civil war, invasion or any of the matters described in exclusion 6.1 q) above and/or any Act of Terrorism as described in exclusion 6.1 t) and clause 5.1 above;
- v) directly or indirectly arising out of or relating to:
 - i) 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
 - ii) 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 clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, Claim or expense.

- w) directly or indirectly arising out of or relating to:
 - i) a Cyber Act; or
 - ii) 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
 - iii) the receipt or transmission of malware, malicious code or similar by the Insured or any other party acting on behalf of the Insured; or
 - iv) any failure or interruption of service provided:
 - 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;
 - 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
 - v) any actual or alleged breach of Data Protection Law by the Insured or any other party acting on behalf of the Insured.
- x) 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.

SECTION 7 – CLAIMS CONDITIONS

7.1 CLAIMS CONDITIONS WHICH APPLY TO THE POLICY

If the Insured does not comply with the following Claims Conditions, the Insurer(s) may refuse to pay a Claim in whole or in part.

- a) The Insured must notify the Insurer(s) in writing as soon as possible of a Claim. Such notification must be made during the Period of Insurance and be sent to Procover.
- b) The Insured must not admit liability for or negotiate the settlement of any Claim, or incur any Defence Costs, without the written consent of the Insurer(s) which shall not be withheld unreasonably. The Insured must do nothing which may prejudice the rights of the Insurer(s), including but not limited to preserving all possible defences, and rights of contribution or indemnity, in respect of a Claim.
- c) The Insured must, at its own expense, provide the Insurer(s) with all assistance and cooperation reasonably required by the Insurer(s) to enable the Insurer(s) to determine the Insured's entitlement to indemnity under the Policy, and in the investigation, settlement and/or defence of any Claim.
- d) The Insurer(s) reserve the right, but does not have an obligation, to take control of and conduct in the Insured's name the investigation, settlement or defence of any Claim. Having regard to the interests of the Insured, the Insurer(s) will be entitled to prosecute for its own benefit any Claim for indemnity or damages or otherwise and will have discretion in the conduct of any proceedings and in the settlement of any such Claim and the Insured must give all such information and assistance in relation to the Claim as the Insurer(s) may require.
- e) Claim(s) against the Insured will only be defended if in the opinion of the Insurer(s) there is a reasonable prospect of success and after taking account of the commercial considerations and economics of defending such a Claim(s).

SECTION 8 – GENERAL CONDITIONS

The following General Conditions apply to the Policy. If the Insured does not comply with the following General Conditions, the Insurer(s) may refuse to pay a Claim in whole or in part or in some circumstances cancel the Policy.

8.1 REASONABLE PRECAUTIONS

The Insured at its own expense must:

- a) take all reasonable precautions to prevent injury, loss of or damage to property and cease any activity which may give rise to liability under this Policy;
- b) exercise care in the selection and supervision of employees;
- c) as soon as possible after discovery cause any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require;
- d) comply with all statutory requirements and other safety regulations imposed by any authority.

8.2 ALTERATION

The Insured must give notice to the Insurer(s) as soon as possible of any alteration which materially affects the risk.

8.3 CANCELLATION

The Insured may cancel this Policy at any time during the Period of Insurance. The Insurer(s) will allow a pro-rata refund of the Premium for the unexpired Period of Insurance less any non-refundable 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 Insurance.

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

8.4 DISCHARGE OF LIABILITY

The Insurer(s) may at any time pay the Limit of Indemnity (after the deduction of any sum already paid) or any lesser amount for which a Claim can be settled and shall be under no further liability except for the payment of Defence Costs incurred to the date of payment provided that the Limit of Indemnity so allows.

8.5 EXCESS

The Insurer(s) shall not be liable for the amount of the Excess stated in the Schedule in respect of the first amount of each and every Claim including Defence Costs.

8.6 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), all Insurer(s) 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.

8.7 CROSS LIABILITIES

Where there is more than one party named as the Insured in the Schedule, this Policy will apply separately to each such Insured in the same manner and to the same extent as if a separate Policy had been issued to each Insured and the Insurer(s) had agreed to waive all rights of subrogation against any of these parties and provided always that the total amount payable under this Policy does not exceed the Limit of Indemnity.

8.8 SUBROGATION

The Insurer(s) shall be subrogated to the Insured's rights of recovery in relation to any Claim or loss paid or payable under this Policy. The Insured shall co-operate fully with the Insurer(s) in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the Insurer(s) rights of subrogation.

8.9 ASSIGNMENT

The Insured shall not be entitled to assign the benefit of this Policy without the Insurer(s) prior written consent. 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.

8.10 SEVERABILITY AND NON-IMPUTATION

Where the Insured is comprised of more than one person or entity and one or more of those persons or entities:

- a) fails to comply with the duty of disclosure under section 21 of the *Insurance Contracts Act 1984* (Cth);
- b) made a misrepresentation to us before this Policy was entered into;
- c) fails to comply with a term of this Policy;

the right of another person or entity to cover under this Policy shall not be prejudiced as a result provided always that the other person or entity:

- i) was entirely innocent of and had no prior knowledge of the relevant conduct; and
- ii) notifies the Insurer(s) in writing of all the facts known to the person or entity as soon as is reasonably practicable upon becoming aware of the relevant conduct.

8.11 SEVERAL LIABILITY NOTICE

The subscribing Insurer(s) obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurer(s) are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

8.12 INTERPRETATION

The headings are for ease of reference only and do not affect its interpretation.

References to any statute, statutory provision, order or rule include a reference to that legislation or those rules as amended, extended, consolidated or replaced from time to time (whether before, on or after the Inception Date of this Policy) and include any former legislation or rules which it re-enacts, consolidates or replaces and any order, regulation, instrument or other subordinate legislation made under the relevant legislation or rules.

Unless the context otherwise requires, words denoting the singular shall include the plural and vice-versa, references to any gender shall include all other genders.

8.13 OTHER INSURANCE

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 must as soon as reasonably practicable notify the Insurer(s) of full details of such other insurance, including the identity of the insurer(s) and the policy number(s), and such further information as the Insurer(s) may reasonably require.

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

8.14 OBSERVANCE OF TERMS

The Insured must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by the Insured shall be a condition precedent to the Insurer(s) liability to make any payment under this Policy.

8.15 GST

The Premium is the amount the Insured pays the Insurer(s) for this insurance and it includes stamp duty, Goods and Services Tax ("GST"), other government charges and any fire services levy that applies.

The Insured must tell the Insurer(s) about the input tax credit ("ITC") the Insured is entitled to for the Premium and the Claim, each time the Insured makes a Claim. If the Insured does not give the Insurer(s) this information or if the Insured tells the Insurer(s) an incorrect ITC, the Insurer(s) will not pay any GST liability the Insured incurs.

The Insurer(s) will reduce the GST amount the Insurer(s) pay for by the amount of any ITC to which the Insured is or would be entitled if the Insured made a relevant acquisition. In these circumstances, the ITC may be claimable through the Insured's 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.

The Insured must advise the Insurer(s) of its correct Australian Business Number & taxable percentage.

The above taxation information is only a guide. The Insured's individual circumstances will be important to and may affect the tax treatment of any premiums the Insured pays or the payment for Claims. The Insured should consult its tax adviser regarding its individual circumstances.

8.16 FAILURE TO PAY PREMIUM

The Insured must must pay the Premium. The Insurer(s) may take steps to cancel the contract of insurance for non-payment of the insurance premium.

8.17 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.

8.18 SANCTIONS SUSPENSION CLAUSE

It is a condition of this insurance, and the Insured agrees, that the provision of any cover, the payment of any Claim and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such Claim or provision of such benefit by the Insurer(s) would expose that Insurer(s) to any sanction, prohibition or restriction under any:

- a) United Nations' resolution(s); or
- b) the trade or economic sanctions, laws or regulations of the European Union, Australia, New Zealand, United Kingdom or United States of America.

Such suspension shall continue until such time as the Insurer(s) would no longer be exposed to any such sanction, prohibition or restriction.



Procover Underwriting Agency Pty Ltd

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