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Excess Professional Indemnity Insurance Policy Wording

Policy Wording

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Important Notices

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.

About the Insurer

The Insurer of this Policy is HDI Global Specialty SE acting through its Australian branch, HDI Global Specialty SE - Australia (ABN 58 129 395 544, AFSL 458776) (“HDI Global Specialty SE - Australia”).

HDI Global Specialty SE is registered in Germany, with registration number HRB211924 and 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 SE - Australia is regulated by the Australian Prudential Regulation Authority.

HDI Global Specialty SE - Australia’s principal place of business and contact details are:

Postal Address: Level 19, 20 Martin Place Sydney, NSW 2000

Telephone: +61 2 8646 8320

Web: www.hdi.global/en-au/

About the Agent

Solution Underwriting Agency Pty Ltd (ABN 68 139 214 323) (AFSL 407780) (“Solution”) of Level 5, 289 Flinders Lane, Melbourne VIC 3000 acts under a binding authority given by the Insurer to administer and issue policies, alterations and renewals. In all aspects of arranging this Policy, Solution acts as an agent of the Insurer and not as an agent for the Insured or any Insured person.

If the Insured has any queries in relation to this Policy, contact Solution in any of the following ways:

Postal Address: Level 5, 289 Flinders Lane, Melbourne VIC 3000

Telephone: +61 (0)3 9654 6100

Email: solution@solutionunderwriting.com.au

Web: www.solutionunderwriting.com.au

Code of Practice

This Policy is compliant with the Insurance Council of Australia’s General Insurance Code of Practice, apart from any claims adjusted outside of Australia. We proudly support this Code. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the Code is available at the following website www.codeofpractice.com.au.

Cooling-off period

You can request a cancellation of Your Policy within fourteen (14) days of its commencement date (the “Cooling Off Period”), and We will give You a full refund (less any taxes, duties, fees or commissions payable that We are unable to refund).

You will not receive a refund if You have made a claim for any incident within the Cooling Off Period, and You must pay Your premium in full.

If Your Policy is for an event that will finish within the Cooling Off Period, You can exercise Your right to cancel before the event starts.

You still have cancellation rights even after the Cooling Off Period. Further details about these rights can be found in the “Cancellation” section of this Policy.

Financial Claims Scheme

The Insurer is an insurance company authorised to carry on general insurance business in Australia by the Australian Prudential Regulation Authority (APRA). Under all reasonable circumstances, financial promises made by us are met within a stable, efficient and competitive financial system. Because of this we are exempted from the requirement to meet the compensation arrangements Australian financial services licensees must have in place to compensate retail clients for loss or damage suffered because of breaches by the licensee or its representatives under legislation. We have compensation arrangements in place that are in accordance with the Insurance Act.

In the unlikely event that we were to become insolvent and were unable to meet our obligations under the Policy, a person entitled to claim maybe entitled to payment under the Financial Claims Scheme. Access to the Scheme is subject to eligibility criteria. Please refer to <https://www.fcs.gov.au> for more information.

Privacy Statement

In this Privacy Statement the use of ‘We’, ‘Us’ and ‘Our’ means the Insurer and Solution, unless specified otherwise.

We are bound by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles, as updated from time to time (“Privacy Act”) when collecting and handling Your personal information including health information. We will only collect personal information from or about You for the purpose of assessing Your proposal for insurance and administering Your insurance Policy, including any claims You make, or claims made against You.

We may need to disclose personal information to other entities within Our group, re-insurers (who may be located overseas including the UK and EU), insurance intermediaries, insurance reference bureaux, credit reference agencies, Our advisers, Our agents, Our administrators and those involved in the claims handling process (including assessors, investigators and others), for the purpose of assisting Us and them in providing relevant services and products, or for the purpose of recovery or litigation.

We will disclose Your Personal Information to someone overseas only if:

- we have reasonable grounds to believe that they are subject to privacy laws that, overall, provide comparable safeguards to those in the Privacy Act; and
- they agree to protect your information in a way that, provides comparable safeguards to those in the Privacy Act.

We may disclose personal information to people listed as co-insured on Your Schedule and to family members or agents authorised by You. Disclosures may also be made to government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law. We will request Your consent to disclose your personal information for any other purpose.

By providing Your personal information to Us, You are deemed to have provided your consent to Us making the disclosures set out above. Your consent remains valid unless You alter or revoke it by giving Us written notice. Without Your personal information We may not be able to issue insurance to You or process Your claim. You also have the opportunity to find out what personal information We hold about You and, when necessary, correct any errors about Your personal information that we hold. Generally, We will do this without restriction or charge.

If You have enquiries about this privacy statement, please email Us at: PrivacyAustralianBranch@hdi-specialty.com or direct your mail to Us at: Level 19, 20 Martin Place, Sydney NSW 2000, Australia, attention: HDI Global Specialty SE – Australia, The Privacy Officer, or email Solution at: compliance@solutionunderwriting.com.au or direct your mail to Solution at: Level 5, 289 Flinders Lane Melbourne VIC 3000.

If You believe that We have interfered with Your privacy rights in Our handling of Your personal information You may lodge a complaint by contacting Us. We will attempt to resolve your privacy related complaint in accordance with Our Privacy Complaints Handling Procedure.

If You would like more information about Our Privacy Policy and Our Privacy Complaints Handling Procedure please visit: https://www.hdi.global/globalassets/_local/asia-pacific-africa/en-au/downloads/hg-aus_branch-privacy-policy_2022.pdf or www.solutionunderwriting.com.au

Complaints and Dispute Resolution Process

We are dedicated to providing You with a high standard of service and We want to ensure We maintain these standards at all times. If You feel that We have not offered You a first-class service, contact Us and tell Us and We will do Our best to resolve the problem.

You are entitled to make a complaint about any aspect of Your relationship with Us including the conduct of Solution for handling your insurance contract or Third-Party Administrator (TPA) that manages Your claim, if applicable. We will attempt in good faith to resolve any complaint/dispute in a fair, transparent and timely manner.

We aim to comply with any relevant Australian Securities and Investments Commission (ASIC) guidelines.

If You have any questions or concerns about Your insurance or the handling of a claim You should, in the first instance, refer Your complaint or dispute to Solution:

Attention: Complaints Officer

Solution Underwriting Agency Pty Ltd

Telephone: +61 (0)3 9654 6100

Email: complaints@solutionunderwriting.com.au

Post: Level 5, 289 Flinders Lane, Melbourne VIC 3000

Solution will acknowledge receipt of Your complaint within 1 business day via phone or email and do their utmost to resolve the complaint to Your satisfaction within 30 days.

If Solution cannot resolve Your complaint to Your satisfaction, Solution will escalate Your matter to the Insurer and the Insurer will review Your complaint within 30 days from receipt of Your complaint. You will be kept informed of the review of Your complaint every 10 business days.

If You are not happy with Our response, You can refer Your complaint to the Australian Financial Complaints Authority ('AFCA'), subject to its rules. AFCA provides a free and independent dispute resolution service for consumers who have general insurance disputes falling within its rules.

You can contact AFCA at:

Phone: 1800 931 678

Email: info@afca.org.au

Website: www.afca.org.au

Mail: Australian Financial Complaints Authority GPO Box 3 Melbourne VIC 3001

Excess Professional Indemnity Insurance Policy

In consideration of the payment of the Premium and in reliance upon the statements made in the **Proposal**, the **Insurer** and the **Policyholder** agree as follows:

I. Insuring Agreement

The **Insurer** agrees to pay **Loss** in accordance with the terms, conditions and exclusions contained in the **Primary Policy**, except as specified within this **Policy**.

The **Insurer's** liability under this **Policy** is independent of the liability of any **Underlying Insurer**.

This **Policy** is in excess of the **Underlying Insurance** and is subject to the **Exhaustion of the Underlying Insurance** including any additional limit for **Defence Costs** provided by the **Underlying Insurance**.

II. Definitions

Unless otherwise specified below and whether bolded or not, words and phrases that appear in this **Policy** have the same meaning as in the **Primary Policy** and apply equally to the singular and plural forms of the respective words.

1. **Continuity Date** means the date specified in Item 5 of the Schedule.
2. **Exhaustion of the Underlying Insurance** means the full erosion of the **Underlying Limit** due to payment of, or agreement to pay, the full **Limit of Liability** specified in Item 7 by the **Underlying Insurers**, and not payment by any other party on their behalf.
3. **Insurer** means HDI Global Specialty SE – Australia.
4. **Limit of Liability** means the amounts identified in Item 3 of the Schedule.
5. **Loss** means that amount payable under this **Policy**
6. **Policy** means this Excess Professional Indemnity Insurance Policy, its provisions and Schedule and all endorsements and attachments thereto.
7. **Policy Period** means the period identified in Item 2 of the Schedule.
8. **Proposal** means the proposal form and any other signed application, and any other documents submitted in connection with the underwriting of this **Policy** or of the **Underlying Insurance**.
9. **Premium** means the amount identified in Item 6 of the Schedule.
10. **Primary Policy** means the policy identified as such in Item 7 of the Schedule.
11. **Prior Policy** means any professional indemnity policy issued by the **Insurer** that existed or expired before the inception date of this **Policy**.
12. **Underlying Insurance** means the **Primary Policy** together with any and all excess layer policies including those identified in Item 7 of the Schedule.
13. **Underlying Insurers** means the insurers of the **Underlying Insurance**.
14. **Underlying Limit** means the amount equal to the aggregate of all limits of liability as set forth in Item 7 of the Schedule for all **Underlying Insurance**.

III. Limit of Liability/Retention

The **Insurer** shall be liable to pay **Loss** covered by the **Underlying Insurance**, in an amount up to the aggregate **Limit of Liability** and in excess of the total **Underlying Limit** but only after **Exhaustion of the Underlying Insurance**.

In the event of the reduction of the **Underlying Limit** by reason of payment of **Loss** by the **Underlying Insurers**, this **Policy** shall pay excess of the reduced limits.

In the event of **Exhaustion of the Underlying Limit**, this **Policy** shall continue in force as the primary insurance but will only pay excess of the retention or deductible that is applicable and set out in the **Primary Policy** and such retention or deductible shall be applied to any subsequent loss in the same manner as specified in the **Primary Policy**.

The Insurer will recognise the reduction or **Exhaustion of the Underlying Limit** as a result of the payment of loss to which any sub-limit applies. In the event of **Exhaustion of the Underlying Insurance**, coverage will apply to loss being the subject of a sub-limit to the extent that such sub-limit has not already been specifically exhausted by payment of loss by any other **Underlying Insurers**.

IV. General Conditions

1. Scope of Coverage

Except as otherwise provided herein, this **Policy** provides no broader cover than the **Primary Policy** and, to the extent coverage is further limited or restricted thereby, any **Underlying Insurance**.

2. Changes to the Underlying Insurance

Any changes to the terms, conditions, exclusions or limitations of the **Primary Policy** and/or any of the **Underlying Insurance** are not binding on this **Policy** without the prior written agreement of the **Insurer**, which will not to be unreasonably withheld. Such changes may entitle the **Insurer** to charge additional premium and/or impose further terms, conditions, exclusions or limitations.

3. Maintenance of Underlying Insurance

The **Policy** shall continue in full force and effect during the **Policy Period**, except for any reduction or **Exhaustion of the Underlying Insurance** by payment of **Loss** as set out in Part III above.

In the event of:

- a. any **Underlying Insurer's** receivership and/or insolvency, and/or inability to pay claims; or
- b. the cancellation of an **Underlying Insurer's Policy**; or
- c. any **Underlying Insurer** initiating any proceedings, whether legal, equitable or otherwise, seeking rescission of such **Underlying Insurer's Policy** or seeking any other declaration, order or holding to determine that such **Underlying Insurer's Policy** is void from inception; or
- d. any refusal by any **Underlying Insurer** to pay a **Claim** even if one or more of the other **Underlying Insurers** accept liability for the same **Loss** under their **Policy**;

then:

- i. the **Insurer** shall not be given and shall not accept any liability either owing or previously owing to the **Policyholder** by such **Underlying Insurer**;
- i. the **Underlying Insurer's Policy** will be deemed to be a self-insured retention and as a result becomes the **Policyholder's** liability;
- i. the **Insurer** shall accept the underlying aggregate annual limit as being eroded or exhausted to the extent of covered loss being paid by the **Policyholder**.

4. Right to Associate

The **Insurer** may at its sole discretion elect to participate in the investigation, settlement and/or defence of any claim against the **Policyholder** even if there is no exhaustion of the **Underlying Limit**.

5. Notice of Claims

The **Policyholder** and all **Insureds** shall give written notice to the **Insurer** of a **Claim** or any other matter covered under this **Policy** or the **Underlying Insurance** as soon as reasonably practicable and in accordance with the notice requirements of the **Primary Policy**. Such written notice shall be provided to:

Proclaim Management Solutions

Email: HGS_Solution-Claims@hdi-specialty.com

Telephone: 1300 570 078

6. Prior Notification and Prior and Pending Litigation

The **Insurer** shall not be liable to make any payment under this **Policy** based on, arising from or attributable to any:

- a. claim, litigation, other proceedings or investigation which existed, were begun before or were pending at the date stated in Item 4 of the Schedule or which arise from matters the same or substantially the same as alleged or established in such claim, litigation, proceedings or investigation.
- b. act, error or omission, or a series of acts, errors or omissions alleged in any **Claim** or circumstance of which notice has been or could have been given under any **Policy** existing or expired before or on the inception date of this **Policy**.

7. Policy Cancellation

- a. This **Policy** shall follow the termination provisions of the **Primary Policy** and shall terminate immediately upon termination of the **Primary Policy**. Notice of cancellation of the **Primary Policy** duly given by the **Primary Insurer** shall serve as notice of cancellation of this **Policy** by the **Insurer** whether or not such notice is actually sent to or received by the **Insurer**.
- b. Notwithstanding subparagraph IV. 7 a. above, this **Policy** may be cancelled by the **Policyholder** or the **Insurer** according to the rights afforded under relevant legislation.
- c. If this **Policy** is terminated by the **Policyholder**, the **Insurer** shall retain the proportion of the **Premium** calculated at customary short-term rates as at the date of cancellation. However, if the **Policyholder** has notified a **Claim** or circumstance during the **Policy Period**, it is agreed between the **Insurer** and the **Policyholder** that there will be no refund of **Premium**.
- d. If this **Policy** is not cancelled for any of the reasons stated in subparagraph IV. 7 a. – c. above, it shall terminate upon expiration of the **Policy Period**.

8. Assignment

This **Policy** and any claims, rights or interest arising from it may not be assigned to a third party.

9. Subrogation

In the event the **Insurer** makes any payment under this **Policy**, the **Insurer** shall be subrogated to all of the **Policyholder's** rights of recovery, and the **Policyholder** shall co-operate with the **Insurer** in securing such rights. The **Policyholder** shall not do anything to prejudice the **Insurer's** ability to assert such rights. The **Insurer** shall not exercise any rights of subrogation against any **Insured** unless the relevant **Insured** has committed a deliberate criminal act or obtained any profit or advantage to which that **Insured** was not legally entitled.

10. Address for Notice

Any notices under this **Policy** other than in respect of a **Claim** shall be provided to:

Managing Director
HDI Global Specialty SE – Australia
Level 19, 20 Martin Place
Sydney, NSW 2000 Australia

Unless otherwise specified in this **Policy**, the date a notice is received by the **Insurer** shall constitute the date any such notice was given.

11. Sanctions/Embargos

No **Insurer** shall be deemed to provide cover and no **Insurer** shall be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose that **Insurer** to any sanctions, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the United Kingdom, Australia or the United States of America.

12. Applicable Law and Jurisdiction

This **Policy** is governed by and is to be interpreted in accordance with the laws of the Commonwealth of Australia and of the State or Territory of the office of the **Insurer** in which the **Policy** was issued. The courts of that State or Territory have exclusive jurisdiction in relation to any disputes regarding the interpretation of this **Policy**.

13. GST

Where the **Insurer** makes payment under this **Policy**:

- a. the **Insured** must inform the **Insurer** of the extent of any entitlement to an input tax credit for the premium at or before the time a **Claim** is made under this **Policy**; and
- b. the amount of the payment will be reduced by the amount of any input tax credit to which the **Insured** is or may, in the opinion of the **Insurer**, be entitled to claim.

If the **Insured** makes a **Claim** under this **Policy**, they must inform the **Insurer** of their Australian Business Number if they have one.

The amount of the applicable **Retention** is calculated after deduction of the amount of any input tax credit that the **Insured** is or, in the opinion of the **Insurer**, may be entitled to claim.

14. Confidentiality Clause

In the event of a **Claim** or **Investigation**, the **Insured** must not disclose the existence, premium payable or any details of this **Policy** to any party except where the **Insurer** provides written consent or as required by operation of law. The **Insured** shall not publish or disclose in an Annual Report or other similar report the nature of the liability covered by this **Policy**, the identity of the **Insurer**, the **Limit of Liability**, or the **Premium** paid for this **Policy**.

15. Continuous Coverage

In the absence of any fraudulent non-disclosure or misrepresentation, where a **Claim** that would otherwise be covered by a **Prior Policy** is now excluded under this **Policy** pursuant to subclause IV 6. (Prior Notification and Prior and Pending Litigation) the **Insurer** agrees to provide cover under the **Policy** for that **Claim**, provided that:

- a. the **Policyholder** first became aware of the circumstances after the **Continuity Date**;
- b. the same terms and conditions as the **Prior Policy** when the **Insured** first became aware of the circumstances apply; and
- c. the **Insurer** may reduce its liability under the **Policy** by the amount that fairly represents the extent the **Insurer's** interests were prejudiced by the failure of the **Insured** to notify the **Insurer** of the circumstance.

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Next Level
Underwriting™

Product Insurer

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HDI Global Specialty SE – Australia

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