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Miscellaneous 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 something 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.

Claims made and notified basis of coverage

This Policy is issued on a 'claims made and notified' basis.

This means that the Insuring Clause responds to claims first made against you during the Policy Period and notified to us as soon as reasonably practicable in the Policy Period or during any applicable Extended Reporting Period as provided by the Policy.

This 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.

Where you give us notice in writing of facts that might give rise to claim against you as soon as reasonably practicable after you become aware of those facts but before the insurance cover provided by the contract has expired, we are not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiry of the period of insurance cover provided by the contract.

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: <http://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 Us to administer and issue policies, alterations and renewals. In all aspects of arranging this Policy Solution acts as an agent of Us 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 from the Code's 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

We are 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 HDI Global Specialty and Solution, unless specified otherwise.

We are bound by the Privacy Act 1988 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 1988;
- reasonable grounds to believe that they are subject to privacy laws of a prescribed country under the Privacy Act 1988; or
- they agree to protect your information in a way that, overall, provides comparable safeguards to those in the Privacy Act 1988

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 any other purpose.

By providing Your personal information to Us, You consent to Us making the disclosures set out above which require consent. This consent to the use and disclosure of Your personal information 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 in this information. Generally, We will do this without restriction or charge.

If You have enquiries or wish to provide feedback about this privacy policy, please email or mail Us at PrivacyAustralianBranch@hdi-specialty.com or Level 19, 20 Martin Place, Sydney NSW 2000, Australia, or email or mail Solution at compliance@solutionunderwriting.com.au or Level 5, 289 Flinders Lane Melbourne VIC 3000.

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

If You would like more information about Our Privacy Complaints Procedure please visit:

<https://www.hdi-specialty.com/int/en/legals/privacy> or www.solutionunderwriting.com.au

Non-renewable policy

This Policy will terminate at the end of the Policy Period specified in the Schedule. If you want to obtain similar insurance for a subsequent Policy Period, You will need to complete a new Proposal form before the end of the Policy Period specified in the Schedule.

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

HDI Global Specialty SE – Australia Miscellaneous 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:

1 Insuring clause

Civil Liability

The **Insurer** will pay to or on behalf of any **Insured** any **Loss** resulting from any **Claim** for civil liability first made against the **Insured** during the **Policy Period**, and notified to the **Insurer** as soon as practicable during the **Policy Period**, arising from the conduct of **Professional Services**.

2 Extensions

Subject to the provisions of this **Policy**, cover is extended under this **Policy** as follows:

2.1 Advancement of Defence Costs and Legal Representation Expenses

The **Insurer** will pay covered **Defence Costs** and all other costs and expenses payable under this **Policy**, no later than thirty (30) days after the receipt and approval of satisfactory itemised invoices. If, for whatever reason, indemnity is not available under this **Policy** for such **Defence Costs** or other costs and expenses paid in advance, the relevant **Insured** shall reimburse the **Insurer** for all such **Defence Costs**, costs and expenses after such determination.

2.2 Competition and Consumer Act and other Legislation

Notwithstanding Exclusion 5.4 (Certain Legislation), Insuring Clause 1 provides cover for any **Claim** which alleges or arises out of conduct in contravention of the *Competition and Consumer Act 2010* (Cth) and other legislation but only where such allegation or conduct constitutes a contravention of such legislation because it:

- (a) is misleading or deceptive or likely to mislead or deceive;
- (b) is the making of a false or misleading representation;
- (c) is unconscionable; or
- (d) is in breach of a warranty implied into a contract for the provision of services by the legislation, and it is not intentional.

2.3 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** by Exclusion 5.17 (a), (b) or (c) Prior Matters, the **Insurer** agrees to provide cover under the **Policy** for that **Claim**, provided that:

- (a) the **Insured** 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.

2.4 Costs of Court Attendance

The **Insurer** agrees to compensate any **Employee** or **Principal** if they are required to attend at any court hearing or **Investigation** as a witness in connection with a **Claim** notified to the **Insurer** provided that:

- (a) such attendance is considered by the **Insurer** acting reasonably to be necessary or beneficial to reduce liability which may result in a payment under this **Policy**; and
- (b) the **Insurer** has given its written consent (not to be unreasonably withheld or unreasonably delayed) prior to attendance; and

- (c) such compensation shall be limited to AUD500 for a **Principal** and AUD250 for any **Employee** per day for each day on which attendance is required.

The **Insurer's** total liability under this Extension will be AUD5,000 in total for all persons for any one **Claim**.

Notwithstanding Clause 6.2 of this **Policy** the **Retention** does not apply to this Extension.

2.5 Consultants, Contractors, Subcontractors, and Agents Vicarious Liability

The **Insurer** agrees to extend cover to any **Loss** arising from a **Claim** for civil liability against the **Insured** arising from any acts, errors or omissions of any consultant, contractor, subcontractor or agent of the **Insured** for which the **Insured** is legally liable due to the conduct of the **Professional Services**.

This Extension neither affords coverage to any consultant, contractor, subcontractor or agent of the **Insured** nor makes any such person or entity an **Insured**.

2.6 Defamation, Libel and Slander

The **Insurer** agrees to extend cover under Insuring Clause 1 to any **Loss** arising from a **Claim** against the **Insured** for any unintentional defamation, libel or slander by the **Insured** in the conduct of the **Professional Services**.

2.7 Dishonesty of Insured

Notwithstanding Exclusion 5.8(a) and 5.8(b) of this **Policy**, the **Insurer** agrees to extend cover under Insuring Clause 1 to any **Loss** arising from a **Claim** against any innocent **Insured** for a dishonest or fraudulent act or omission or any malicious, criminal or intentional breach of law by any **Principal** (other than by a **Principal** who is also a sole practitioner) or **Employee**, or the **Policyholder** in the conduct of **Professional Services**, provided that coverage under this Extension is not provided to any **Insured** committing, participating in or condoning such dishonest or fraudulent act or omission or malicious, criminal or intentional breach of law.

2.8 Extended Reporting Period

If this **Policy** is not renewed by either the **Insurer** or the **Insured**, or is not otherwise replaced by the **Insured** with a similar professional indemnity policy, the **Insurer** agrees to provide an extended reporting period of 45 days (from the expiration of the **Policy Period**) under this **Policy** at nil additional premium.

The extended reporting period will only apply to a **Claim** first made or an **Investigation** first commenced against the **Insured** before or during the 45 day extended reporting period, but only in respect of any **Professional Services** provided prior to the non-renewal of this **Policy**.

This Extension does not apply:

- (a) if there is a fraudulent **Claim** under the **Policy** by or on behalf of the **Insured**; or
- (b) if this **Policy** is replaced by the **Insured** with any other professional liability policy.

2.9 Fiduciary Duty

The **Insurer** agrees to extend cover under Insuring Clause 1 to any **Loss** arising from a **Claim** against the **Insured** directly related to a breach of fiduciary duty owed by the **Insured** to a client or customer of the **Insured**.

2.10 Fines and Penalties

The **Insurer** agrees to extend cover under Insuring Clause 1 to any **Loss** arising from a **Claim** against the **Insured** in relation to the payment of any civil fines or penalties, provided that the **Insurer** is not liable to pay any fines or penalties:

- (a) for which the **Insurer** is legally prohibited from indemnifying the **Insured** under any law, or
- (b) based on, attributable to or in consequence of any final judicial findings made against the **Insured** for or admissions by the **Insured** of any recklessness or any wilful, intentional or deliberate failure to comply with any lawful notice or direction, enforcement action or proceeding under any legislation or regulation.

The **Insurer's** total liability in the aggregate under this Extension shall be the amount specified in Item 13 of the **Schedule**.

2.11 Infringement of Copyright

Notwithstanding Exclusion 5.9 (Infringement of Intellectual Property), the **Insurer** agrees to extend cover to any **Loss** arising from a **Claim** for civil liability for unintentional infringement by the **Insured** of any **Intellectual Property** right in the conduct of the **Professional Services**.

The **Insurer** will not be liable to make any payment under this **Policy** for:

- (a) any deliberate or intentional infringement of any **Intellectual Property** right; or
- (b) any actual or alleged breach of patent.

2.12 Joint Venture/Consortium

This **Policy** will provide cover to any **Loss** arising from a **Claim** against the **Insured** for civil liability arising from the **Insured's** participation in any **Joint Venture** in the conduct of the **Professional Services**.

Any indemnity provided under this Extension will be limited to the **Insured's** proportion of any liability incurred by such **Joint Venture**.

This Extension neither provides coverage to any person or entity with whom or which the **Insured** is in a **Joint Venture** nor makes any such person or entity an **Insured** under this **Policy**.

2.13 Legal Consultation

The **Insured** is entitled to up to two hours legal advice on any matter related to the risks insured under this **Policy**, except in relation to the scope of cover provided under this **Policy**, or claims, disputes or complaints against the **Insurer**, on the condition that:

- (a) advice is sought from the legal adviser during the **Policy Period**;
- (b) the **Insured** must provide the legal adviser with the policy number and **Policy Period**; and
- (c) the legal advice is limited to 30 minutes in relation to any particular matter.

The cost of the legal advice is to be paid by the **Insurer** and not the **Insured**.

Details of our Legal Panel can be found here <https://www.hdi-specialty.com/int/en/services/report-a-claim#navigation-1544987572834>

2.14 Investigations and associated Legal Representation Expenses

This **Policy** extends cover for **Investigations** into **Professional Services** provided by the **Insured**. The **Insurer** agrees to pay on behalf of the **Insured** its **Legal Representation Expenses** at any **Investigation** first commenced against the **Insured** during the **Policy Period** and notified to the **Insurer** during the same **Policy Period**.

The **Insurer** is entitled to appoint legal representation at its discretion to represent the **Insured** in the **Investigation**.

The **Insurer's** total liability under this Extension will not exceed the sub-limit specified in Item 9 of the **Schedule**.

Notwithstanding Clause 6.2 of this **Policy** the **Retention** does not apply to this Extension.

For the purposes of cover under this Extension a **Claim** is not required.

2.15 Loss of or Damage to Documents

The **Insurer** will indemnify the **Insured** for reasonable and necessary costs and expenses incurred by the **Insured** (although not the **Insured's** own time) in replacing, restoring or reconstituting **Documents** due to a physical loss of, or damage to, such **Documents** in the **Insured's** care, custody or control in the conduct of the **Professional Services** and where such loss or damage is discovered for the first time during the **Policy Period** and is notified to the **Insurer** during the **Policy Period**.

The **Insurer** will not pay for any physical loss, damage or destruction resulting from:

- (a) any computer virus, spyware, malware or other electronic attack; or
- (b) wear and tear or gradual deterioration.

The maximum amount payable by the **Insurer** under this Extension is the sub-limit amount specified in Item 12 of the **Schedule**.

The cover provided by this Extension is not subject to Insuring Clause 1 or Exclusion 5.3 (Bodily Injury / Property Damage) unless in breach of professional duty.

2.16 Newly Created or Acquired Subsidiaries

If, during the **Policy Period**, the **Policyholder** newly acquires or creates any **Subsidiary**, then such **Subsidiary** including its **Employees** and **Principals** will be automatically covered for no additional premium under this **Policy** provided that:

-
- (a) the new **Subsidiary** has not incurred or paid any professional indemnity claims against it for the five (5) years preceding the date of its acquisition;
 - (b) the new **Subsidiary** does not perform or provide any **Professional Services** to clients located within the United States of America and/or the Dominion of Canada or any of their territories or protectorates;
 - (c) the new **Subsidiary** is not incorporated or domiciled in the United States of America and/or the Dominion of Canada or any of their territories or protectorates; and
 - (d) in the case of an acquisition, where the revenue of the new **Subsidiary** for the twelve (12) months preceding the date of its acquisition does not exceed 20% of the consolidated revenue of the **Policyholder** and its Subsidiaries for the 12 months preceding the commencement of the **Policy Period**.

If the new **Subsidiary** is not automatically covered pursuant to sub-clauses (a) to (d) above, the **Insurer** will only provide cover for a period of 45 days (but not beyond the end of the **Policy Period**) from the effective date of the new **Subsidiary** being acquired or created. Cover in respect of any such new **Subsidiary** applies only in respect of **Professional Services** performed during the 45 day period while it is a **Subsidiary** of the **Policyholder**. The **Insurer** will consider providing cover for such new **Subsidiary** for a further period beyond the 45 days on such terms and conditions and for such additional premium as may be agreed subject to receipt by the **Insurer** of full details of such new **Subsidiary**.

2.17 Pre-Investigation Costs

The **Insurer** agrees to pay on behalf of the **Insured** its reasonable and necessary legal and other professional fees, costs and expenses (but not including any remuneration of any **Principal** or **Employee**) incurred directly with respect to:

- (a) any **Pre-Investigation**; or
- (b) preparing any written notice or reports to any regulator or official body in connection with any **Pre-Investigation**.

The aggregate sub-limit of liability for all payments under this Extension is specified in Item 11 of the **Schedule**.

2.18 Public Relations Expenses

This **Policy** will extend to provide cover for the reasonable costs of a public relations consultant retained with the prior consent of the **Insurer** (not to be unreasonably withheld or unreasonably delayed) to minimise the harm to the public reputation of such **Insured** in connection with a **Claim** that is covered under this **Policy**.

Notwithstanding Clause 6.2 of this **Policy** the **Retention** does not apply to this Extension, however, the **Insured** will bear uninsured 50% of any such costs and expenses. The **Insurer** will pay the remaining 50% up to the applicable sub-limit specified in Item 10 of the **Schedule**.

2.19 Run-Off Cover

If, during the **Policy Period**, the **Policyholder** is consolidated with, merged into or acquired by any other entity, becomes the subject of an **Insolvency Event** or ceases to operate, the cover provided under the **Policy** for the **Insured** will continue until the end of the **Policy Period**, provided that such cover will only apply in respect of a **Claim** that arises from the conduct of the **Insured's Professional Services** prior to the date the **Policyholder** was merged into or acquired by another entity, became the subject of an **Insolvency Event** or ceased to exist or operate.

The **Insurer** may, acting reasonably, extend the coverage provided by this Extension to include **Claims** first made against the **Insured** within a period of eighty-four (84) months from the end of the **Policy Period**, provided that such coverage will only apply in respect of a **Claim** that arises from the conduct of the **Professional Services** prior to the date the **Policyholder** was merged into or acquired by another entity, became the subject of an **Insolvency Event** or ceased to exist or operate.

3 Optional extensions

Each of the following Extensions apply only if the Extension is shown to be included in the **Schedule**. Each of the Extensions is subject to all of the terms, exclusions and conditions of this **Policy** unless otherwise stated in this Clause. None of these Extensions increase the Limits of Liability specified in the **Schedule**.

3.1 Mitigation Costs

This **Policy** will cover the reasonable and necessary mitigation costs and expenses incurred by the **Insured** as a result of reasonable and necessary actions taken by the **Insured** to:

1. reduce the amount of any potential **Claim** that would be covered under this **Policy**; or
2. mitigate the risk of a fact, matter or circumstance leading to a potential **Claim** that would be covered under this **Policy**;

provided always that:

- (a) any such fact, matter or circumstance is notified to the **Insurer** as soon as practicable upon being discovered by the **Insured**, prior to the **Insured** incurring any such mitigation costs or expenses and during the **Policy Period**;
- (b) the **Insurer** has given prior written consent (not to be unreasonably withheld or unreasonably delayed) to such mitigation costs or expenses being incurred;
- (c) no admission of liability (whether by word, conduct or otherwise) is made by the **Insured**;
- (d) the **Insurer** will not pay any costs or expenses incurred by the **Insured** in investigating or establishing its entitlement to **Policy** coverage under this Extension;
- (e) no cover is provided for indirect costs and expenses such as overheads, any of the **Insured's** profit including the loss or diminution of the **Insured's** profit, bonus, incentive payment or opportunity cost;
- (f) no cover is provided for costs and expenses of materials or **Professional Services**, which result in an increased quality or standard from that specified in the parameters of the relevant contract;
- (g) cover afforded under this Extension will not include any **Defence Costs**; and
- (h) the maximum aggregate amount payable under this Extension is specified in Item 14 of the **Schedule**.

The cover provided by this Extension is not subject to Insuring Clause 1.

3.2 Principal's Previous Business

The **Insurer** agrees to extend cover to any **Loss** arising from a **Claim** for civil liability against any person who is a **Principal** during the **Policy Period** arising from that **Principal's** previous business, of the same type and nature as the **Professional Services**, provided that such **Claim** is first made against the **Principal** during the **Policy Period** and notified to the **Insurer** during the **Policy Period**.

The cover provided by this Extension applies regardless of the **Retroactive Date**.

3.3 Reinstatement of the Limit of Liability

If the **Limit of Liability** is partially reduced or exhausted by any **Claim**, **Loss** and/or **Defence Costs** then the **Insurer** will reinstate the **Limit of Liability** for any subsequent **Loss** arising from any **Claims** covered by Insuring Clause 1, provided always that:

- (a) such reinstatement will only apply to subsequent **Claims** including **Defence Costs** that are totally unrelated or unconnected to the **Claim**, **Loss** and/or **Defence Costs** that reduced or exhausted the **Limit of Liability**; and
- (b) the **Insurer** will be liable for no more than two times the **Limit of Liability** in the aggregate in respect of all **Claims** including **Defence Costs**.

4 Definitions

In this **Policy**:

4.1 Act of Terrorism

means an activity that:

- (a) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and
- (b) appears to be intended to:
 - i. intimidate or coerce a civilian population;
 - ii. disrupt any segment of the economy of a government de jure or de facto, state or country;
 - iii. overthrow, influence, or affect the conduct or **Policy** of any government de jure or de facto by intimidation or coercion; or
 - iv. affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

4.2 Aircraft

means any vessel, craft, machine or thing made or intended to fly or move in or through space or the atmosphere.

4.3 Claim

means:

- (a) the receipt by the **Insured** of any written demand for compensation or damages or non-monetary civil relief made against the **Insured** by a third party; or
- (b) any civil proceeding brought by a third party against the **Insured** for compensation or damages, or non-monetary civil relief,

alleging any act, error, omission, common law misstatement, common law misleading statement, neglect, or breach of duty arising out of the conduct of the **Professional Services**.

4.4 Continuity Date

means the date set out in Item 7 of the **Schedule**.

4.5 Cooperate

means that the **Insured**, using best endeavours:

- (a) assists the **Insurer** or its duly appointed representatives to put forward the best possible defence of a **Claim** within the time constraints available;
- (b) will have adequate internal systems in place, which will allow ready access to any material information deemed relevant by the **Insurer** or its duly appointed representatives; and
- (c) will give to the **Insurer** or its duly appointed representatives all such information, assistance, signed statements or affidavits as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

4.6 Defence Costs

means reasonable and necessary fees, costs and expenses incurred by the **Insured** with the **Insurer's** prior written consent (such consent not to be unreasonably withheld or delayed) in the investigation, adjustment, defence, settlement or appeal of any covered **Claim** under this **Policy**. **Defence Costs** shall not include salaries, wages, fees, commissions, bonuses, profit-sharing or other remuneration, overheads or benefit expenses of any **Insured**.

4.7 Documents

means documents of any nature, including computer records or electronic data, but does not include money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument.

4.8 Employee

means:

- (a) each person who was or is employed by the **Policyholder** in the ordinary course of the **Professional Services** and who is paid by the **Policyholder** by way of salary or wages; or
- (b) a volunteer working without fee or reward in the ordinary course of the **Professional Services**, provided that the performance of whose duties is subject to the direction and control of the **Policyholder**.

4.9 Insolvency Event

means:

- (a) the appointment of an administrator, special manager, provisional liquidator, liquidator or any other insolvency practitioner to a company; or
- (b) where (except for the purpose of a solvent reconstruction or amalgamation) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - i. the winding up, dissolution or administration of a company; or
 - ii. a company entering into an arrangement, amalgamation, compromise, composition or reconstruction with or assignment for the benefit of its creditors or a class of creditors.

4.10 Insured

means each of the following, individually and jointly:

- (a) the **Policyholder**;
- (b) any **Subsidiary**;
- (c) any past and/or present **Principal** or **Employee**, but only in his or her capacity as such; and/or
- (d) the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.

4.11 Insurer

means HDI Global Specialty SE – Australia.

4.12 Intellectual Property

means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, circuit layouts, plant varieties, company business and domain names and inventions.

4.13 Investigation

means a formal or official investigation, examination or inquiry before any court, tribunal, professional body or external official person having legal authority, including a disciplinary body, to conduct an investigation, including a Royal Commission, into your **Professional Services**, and for which the **Insured** has received a notice or a written request to attend as witness. **Investigation** does not include:

- (a) any industry-wide investigation and/or routine supervision, inspection, compliance or similar review;
- (b) any enquiry, review, investigation or audit conducted by any governmental taxation authority in relation to the **Policyholder's** own taxation affairs; or
- (c) any enquiry, review, investigation or audit conducted by any governmental work or occupational safety authority in relation to the **Policyholder's** own compliance with any work or occupational safety laws or obligations.

4.14 Joint Venture

means any enterprise carried on in common by the **Policyholder** with a third party or parties (not being an **Insured** under this **Policy**).

4.15 Legal Representation Expenses

means the reasonable legal costs or related professional fees incurred by or on behalf of an **Insured** (but not including any remuneration of any **Principal** or **Employee**) with the prior written consent of the **Insurer**, whose consent is not to be unreasonably withheld or delayed, directly in connection with an **Insured** co-operating with or being represented at an **Investigation**.

4.16 Limit of Liability

means the amount stated in Item 4 of the **Schedule**, which is available to indemnify the **Insured** in respect of any one **Claim** and in the aggregate during the **Policy Period** subject to Optional Extension 3.3 (Reinstatement of the Limit of Liability).

4.17 Loss

means the total amount in damages, judgments, settlements, **Defence Costs** and the award of claimant's costs that the **Insured** becomes legally obligated to pay on account of a **Claim**.

Loss does not include any of the following:

- (a) aggravated, punitive or exemplary damages;
- (b) fines or penalties imposed by law (which terms, for the avoidance of doubt, do not include any civil compensatory orders covered by Extension 2.10);
- (c) costs incurred by the **Insured** post judgment in complying with any order for, grant of, or agreement to provide injunctive or non-monetary relief;
- (d) any amount which constitutes reduction, set off or return of fees, or expense, in whole or in part, paid to or charged by the **Insured**;
- (e) any internal or overhead expenses of the **Insured**;
- (f) taxes or sums payable in relation to taxes; or
- (g) any matters which are uninsurable under any applicable law or where the **Claim** is made.

4.18 Policy

means the provisions of this document, the **Schedule** and all endorsements and attachments thereto.

4.19 Policyholder

means the legal entity named in Item 1 of the **Schedule**.

4.20 Policy Period

means the period from the inception date of this **Policy** to the expiration date specified in Item 2 of the **Schedule**. **Policy Period** does not include any extended reporting period.

4.21 Pollutants

mean any substance exhibiting hazardous characteristics as is or may be defined by any applicable environmental protection legislation. **Pollutants** also include, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, fungi, toxic mould, any explosive, radioactive or other hazard material, fuels, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odour, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

4.22 Pollution

means the actual, alleged or threatened discharge, dispersal, migration, seepage, escape or release of any **Pollutant** whether in liquid, gas, thermal, solid, noise, odour, vibration, ionising radiation or electromagnetic radiation or other form at any time.

4.23 Pre-Investigation

means:

- (a) a raid or on-site visit to the **Policyholder** by any regulator or official body first occurring during the **Policy Period** that involves in connection with the **Professional Services**, the production, review, copying or confiscation of records or interviews of any **Employee** or **Principal**; or

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- (b) a formal notification by the **Policyholder**, an **Employee** or a **Principal** to any regulator or official body, first given during the **Policy Period**, where the **Policyholder** reasonably considers that a material breach of the **Policyholder's** legal or regulatory duty (arising from the provision of its **Professional Services**) has occurred, may have occurred or may occur in the foreseeable future and which the **Policyholder**, an **Employee** or a **Principal** is required to give notice of as set out in the regulator's or official body's rules and regulations.

Pre-Investigation does not include:

1. any industry-wide investigation and/or routine supervision, inspection, compliance or similar review;
2. any enquiry, review, investigation or audit conducted by any governmental taxation authority in relation to the **Policyholder's** own taxation affairs; or
3. any enquiry, review, investigation or audit conducted by any governmental work or occupational safety authority in relation to the **Policyholder's** own compliance with any work or occupational safety laws or obligations.

4.24 Prior Policy

means any professional indemnity policy issued by the **Insurer** that existed or expired before the inception date of this **Policy**.

4.25 Principal

means any natural person, who is or has been during the **Policy Period** a principal, partner or director of the **Policyholder** or any **Subsidiary**, but only in the conduct of the **Professional Services**, and includes each former **Principal** and each person who becomes a **Principal** during the **Policy Period**.

4.26 Professional Services

means the professional services, as described at Item 3 of the **Schedule**, provided by the **Insured** for or on behalf of a client of the **Policyholder**.

4.27 Proposal

means all signed applications and any other documents submitted in connection with the underwriting of this **Policy** or any **Prior Policy** underwritten by the **Insurer** or its affiliates of which this **Policy** is a direct or indirect renewal or replacement.

4.28 Relative

means:

- (a) any legal spouse, domestic partner or companion; or
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling or child.

4.29 Retention

means the amount specified in Item 5 of the **Schedule**.

4.30 Retroactive Date

means the date specified in Item 6 of the **Schedule** (if any).

4.31 Schedule

means the schedule the **Insurer** issues to the **Policyholder** with this **Policy** or any subsequent or amended version of that **Schedule**.

4.32 Subsidiary

means any company in which the **Policyholder** exercises a controlling influence at the inception of the **Policy Period** by means of:

- (a) directly or indirectly holding more than 50% of the voting rights;
- (b) directly or indirectly having the right to elect, appoint, designate, dismiss or remove a majority of the board of directors or comparable management or supervisory board;
- (c) a control agreement concluded directly with the **Policyholder**; or
- (d) the provisions of the **Policyholder's** or the **Subsidiary's** articles of association or equivalent.

4.33 we/We, our/Our, us/Us

means HDI Global Specialty SE Australia and Solution acting as the agent of the Insurer.

4.34 you/You, your/Your

means the Insured.

5 Exclusions

The **Insurer** will not cover the **Insured** or any other person for **Loss** resulting from any **Claim**, and **Legal Representation Expenses** arising from any **Investigation**, or any other payment under any section of this **Policy**:

5.1 Assumed Liability

based on, directly or indirectly arising from, attributable to, or any way connected with any liability assumed by the **Insured** under any contract, deed, memorandum of understanding or any other agreement where such liability would not have existed in the absence of such a contract, deed, memorandum of understanding or any other agreement including, without limitation, any term or agreement:

- (a) to pay liquidated damages or any penalty; or
- (b) in the nature of an indemnity, release, hold harmless, warranty or guarantee.

5.2 Aviation

based on, directly or indirectly arising from, or caused by the operation, navigation or ownership of any hovercraft or **Aircraft**, or any product that is incorporated with the **Insured's** knowledge in an **Aircraft** which is connected with the navigation, propulsion, flying capabilities or safety of an **Aircraft**.

5.3 Bodily Injury / Property Damage

based on, directly or indirectly arising from, attributable to, or any way connected with bodily injury, mental injury (including but not limited to mental anguish and mental stress), invasion of privacy, harassment, disease or death of any person(s) or loss of or damage to property unless such **Claim** arises directly out of any breach of a professional duty owed by the **Insured** in the conduct of the **Professional Services**.

5.4 Certain Legislation

based on, directly or indirectly arising from, attributable to, or any way connected with:

- (a) the *Competition and Consumer Act 2010 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)*, *Corporations Act 2001 (Cth)*, *National Consumer Credit Protection Act 2009 (Cth)*, as amended from time to time or as replaced by any subsequent comparable legislation; or
- (b) any State or Territory Fair Trading Act or any comparable legislation, as amended from time to time or as replaced by any subsequent comparable legislation.

5.5 Cyber Loss

based on, directly or indirectly arising from, attributable to, or any way connected with any **Cyber Loss**, **Cyber Act** or **Cyber Incident**.

For the purposes of this Exclusion:

- (a) **Cyber Loss** means any **Claim**, **Loss**, damage, liability, cost, expense, fines or penalties or any other amount directly or indirectly caused by:
 1. the use or operation of any **Computer System** or **Computer Network**;
 2. the reduction in or loss of ability to use or operate any **Computer System**, **Computer Network** or **Electronic Data**;
 3. access to, processing, transmission, storage or use of any **Electronic Data**;
 4. inability to access, process, transmit, store or use any **Electronic Data**;
 5. any threat of or any hoax relating to clauses (a)(1) to (a)(3) of this Exclusion;
 6. any error or omission or accident in respect of any **Computer System**, **Computer Network** or **Electronic Data**;
 7. the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**;

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8. the **Insured**, or anyone acting on the **Insured's** express or implied authority, being induced by any dishonest act, utilising a **Computer System**, **Computer Network** or **Electronic Data**, to voluntarily part with title to or possession of any property or money; or
9. a **Cyber Act** or **Cyber Incident** or any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**.
- (b) **Computer System** means any computer, hardware, software, application, process, code, programme, information technology, communications system or electronic device owned or operated by the Insured or any other party. This includes any similar system and any associated input, output or data storage device or system, networking equipment or back up facility.
- (c) **Computer Network** means a group of **Computer Systems** and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks, allowing the networked computing devices to exchange **Electronic Data**.
- (d) **Electronic Data** means facts, concepts and information converted to a form useable for communication, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.
- (e) **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 or operation of any **Computer System**.
- (f) **Cyber Incident** means:
- i. any error or omission or series of related errors or omissions involving access to, processing of, use of, or operation of any **Computer System**; or
 - ii. any partial or total unavailability of failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

5.6 Directors' and Officers' Liability

based on, directly or indirectly arising from, attributable to, or any way connected with any conduct or alleged conduct of the **Insured** in the capacity of director, secretary or officer of a body corporate or any breach or alleged breach by the **Insured** of a duty owed in that capacity.

5.7 Employment Liability

based on, directly or indirectly arising from, attributable to, or any way connected with bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, disease or death of any **Insured** person or damage to or destruction of any property of any **Insured** person, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment.

5.8 Fraud, Dishonesty & Intentional Conduct

based on, directly or indirectly arising from, attributable to, or in any way connected with any **Insured** committing or condoning or allegedly committing or condoning any:

- (a) fraudulent or dishonest act or omission;
- (b) any criminal, malicious, or intentional breach of the law; or
- (c) cartel or other anti-competitive conduct, or gaining any advantage or profit to which the **Insured** is not legally entitled.

For purposes of this Exclusion, the facts pertaining to and knowledge possessed by any **Insured** person shall not be imputed to any other **Insured** person provided that any state of mind or knowledge possessed by any past or present sole **Principal** or sole practitioner, chairman of the board, chief executive officer, chief financial officer or chief operating officer of the **Policyholder** will be imputed to the **Policyholder**.

5.9 Infringement of Intellectual Property

based on, directly or indirectly arising from, attributable to, or any way connected with the actual or alleged infringement of any **Intellectual Property** right.

5.10 Licencing Investigations

directly or indirectly caused by, arising out of or in any way connected with any inquiry, commission, hearing, prosecution, examination or investigation relating to the **Insured** failing to be properly registered, licenced or accredited to provide **Professional Services** as required by any law or other regulation including industry codes of practice.

5.11 Loss of Documents – Magnetic or Electrical Media

based on, directly or indirectly arising from, attributable to, or any way connected with the physical loss of or damage to **Documents** which are stored on magnetic or electrical media unless:

- (a) such **Documents** have been successfully duplicated on magnetic or electrical media; and
- (b) the duplicated **Documents** can be used as the basis for restoring the **Documents** to their original status.

5.12 Nuclear Risks

based on, directly or indirectly arising from, attributable to, or any way connected with:

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

5.13 Obligations to Principals and Employees

based on, directly or indirectly arising from, attributable to, or in any way connected with any breach of any obligation owed to any **Principal** or **Employee** arising out of or in the course of that **Principal** or **Employee's** employment by the **Policyholder**, including but not limited to any shortfall and/or non-payment of wages, salaries, profits, superannuation guarantees and any other employment related benefits.

5.14 Owners or Occupiers Liability

based on, directly or indirectly arising from, attributable to, or any way connected with the ownership, possession or use by or on behalf of the **Insured** of any:

- (a) **Aircraft**, watercraft, hovercraft, motor vehicle or trailer; or
- (b) buildings, structures, premises or land or that part of any building leased, occupied or rented by the **Insured** or any property of the **Insured**.

5.15 Payments or Benefits Received

based on, directly or indirectly arising from, attributable to, or any way connected with the refund (whether expressed as a payment, reimbursement, recoupment, compensation, disgorgement or demand) of any fees, charges, disbursements, expenses costs, taxes, commissions or other payments or benefits received by the **Insured** from its client as remuneration for the provision of the **Professional Services**.

5.16 Pollution

based on, directly or indirectly arising from, attributable to, or in any way connected with **Pollution** or **Pollutants** in whatever quantity or form.

5.17 Prior Matters

based on, directly or indirectly arising from, attributable to, or in any way connected with any:

- (a) matter notified in whole or in part to the **Insurer** or any other insurer before the **Policy Period**;
- (b) **Claim** first made or **Investigation** first commenced before the **Policy Period**; or
- (c) circumstance which was known or ought reasonably to have been known to the **Insured** prior to the commencement of the **Policy Period**.

5.18 Products Liability

based on, directly or indirectly arising from, attributable to, or any way connected with the sale, supply, manufacture, installation, construction, erection, alteration, repair, processing, assembly, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the **Insured**.

5.19 Related Persons & Entities

brought or maintained by or on behalf of:

- (a) any **Insured** or parent company of any **Insured**;
- (b) any entity within the same group of companies as the **Insured**;
- (c) any firm, company, partnership or other entity in which the **Insured** or any director, partner or **Principal** of the **Insured** has a financial or executive interest or which has a financial or executive interest in the **Insured**;
or
- (d) any person or entity who, at the time of the act, error or omission giving rise to the **Claim** is a **Relative** of any **Insured** or controlled by a **Relative** of any **Insured**.

5.20 Retroactive Date

based on, directly or indirectly arising from, attributable to, or any way connected with the conduct of the **Professional Services** prior to the **Retroactive Date** (if any) specified in Item 6 of the **Schedule**.

5.21 Trading Losses or Insolvency

based on, directly or indirectly arising from, attributable to, or any way connected with:

- (a) any trading losses or trading liabilities or debts incurred by any business managed or carried on by the **Insured**; or
- (b) the **Insolvency Event** of the **Insured**.

5.22 Trustee Liability

based on, directly or indirectly arising from, attributable to, or any way connected with any services provided by the **Insured** in the capacity of a trustee provided always that this Exclusion will not apply where the **Insured** acts as a trustee, stakeholder or custodian where such activities are undertaken in connection to the **Professional Services**.

5.23 War and Terrorism

based on, directly or indirectly arising from, attributable to, any way connected with, or in consequence of:

- (a) invasion, war, civil war, rebellion, hostilities (whether war be declared or not), acts of foreign enemies, insurrection, revolution, 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, public or local authority; or
- (b) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**.

6 Limit of liability and retention

6.1 Aggregate Limit of Liability

- (a) The **Limit of Liability** specified in Item 4 of the **Schedule** is the aggregate limit of the **Insurer's** liability for all **Loss** arising from any one **Claim**.
- (b) The **Insurer's** maximum aggregate liability under this **Policy** for all **Loss** arising from all **Claims** and all **Legal Representation Expenses** arising from all **Investigations**, irrespective of the number of **Claims** or **Investigations** under this **Policy**, the amount claimed or the number of **Insureds** who make claims, is the **Limit of Liability** specified in Item 4 of the **Schedule**, subject to the applicability of Optional Extension 3.3 (Reinstatement of the Limit of Liability).
- (c) The **Limit of Liability** is inclusive of all sub-limits of liability and any other amounts insured under the **Policy**. Any sub-limit of liability shown in this **Policy** will be the **Insurer's** maximum aggregate liability under such sub-limit of liability irrespective of the number of **Claims** or **Investigations**, the amount claimed or the number of **Insureds** who make a claim under this **Policy**.
- (d) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under the **Policy**. Where a single act, error or omission gives rise to more than one **Claim**, all such **Claims** shall jointly constitute one **Claim** under the **Policy**.
- (e) All **Claims**, and claims in respect of any other amounts **Insured** under the **Policy**, attributable to one source or originating cause shall be deemed to be a single **Claim** and only one **Limit of Liability** shall apply.

6.2 Retention

- (a) The **Insurer** shall only be liable for the amount of **Loss** arising from each **Claim** or **Investigation** or benefit provided under this **Policy** which is in excess of the amount of the applicable **Retention** specified in Item 5 of the **Schedule**.
- (b) All **Claims**, and claims in respect of any other amounts insured under the **Policy**, attributable to one source or originating cause shall be deemed to be a single **Claim** and only one **Retention** shall apply.

7 Obligations, notice and claims

7.1 Notice of Claim

The **Insured** will give written notice to the **Insurer** of a **Claim** or any other matter covered under this **Policy** as soon as practicable. Such written notice shall be provided to:

Proclaim Management Solutions Pty Ltd

Email: HGS_Solution-Claims@hdi-specialty.com

Telephone: 1300 570 078

The date the **Insurer** receives such notice will constitute the date such notice was given.

7.2 Defence of Claims

The **Insurer** will have the right, but not the duty, acting reasonably, to take over conduct and defend any **Claim** brought against the **Insured** by or on behalf of any company.

However, the **Insured** has the right to request that the **Insurer** defend a **Claim**. Such a request is to be in writing to the Claims Manager of the **Insurer** either at the commencement of the **Policy Period** or when a **Claim** is notified. If the **Insurer** agrees to do so, that does not waive the **Insurer's** rights under the **Policy**, if any. The defending of a **Claim** by the **Insurer** does not afford the **Insured** or **Policyholder** any greater cover under this **Policy** and any costs and expenses incurred that are not covered by the **Policy** will be for the **Insured's** own account.

If and to the extent that an actual or potential conflict of interest might otherwise arise as between the **Insureds**, the **Insurer** shall agree to **Insureds** being separately legally represented in respect of a **Claim**.

7.3 Co-Operation and Mitigation

The **Insured** will advise all relevant facts to and **Cooperate** with the **Insurer** and provide all documents and information to the **Insurer** that it may reasonably require in connection with a **Claim**, and further shall take all reasonable and necessary steps and follow the **Insurer's** instructions in order to clarify the relevant facts and to mitigate **Losses** in connection with any **Claim**.

7.4 Allocation of Loss

In the event:

- (a) of a **Claim** against an **Insured** or where an **Insured** suffers a **Loss** that includes both a covered and uncovered element; or
- (b) that a **Claim** or a **Loss** includes both a covered **Insured** and uncovered **Insured** or another party;

the **Insurer** will advance **Defence Costs** which it considers are covered under the **Policy**. If the **Insured** disagrees with the **Insurer's** allocation, the **Insurer** and the **Insured** shall then use their best endeavours to determine a reasonable allocation of **Loss** that is covered under this **Policy** and **Loss** that is not covered on the basis of the relative legal and financial exposures of the covered and uncovered matters and/or parties.

In the event of an unresolved dispute as to allocation, such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Law Society, or equivalent organisation, for the State or Territory out of which the **Policy** was issued). The Senior Counsel is to determine the fair and reasonable allocation as an expert, not as an arbitrator. The parties agree to be bound by the final opinion of the Senior Counsel. The costs of obtaining this opinion will be paid by the **Insurer** and will not form part of the **Defence Costs**.

7.5 Consent to Settlement

The **Insured** will not incur any **Defence Costs**, admit or assume any liability, consent to any judgment, agree to any settlement, or make any settlement offer without the **Insurer's** prior written consent (not to be unreasonably withheld).

Where there is a dispute between any **Insured** and the **Insurer** as to whether a **Claim** should be settled or should continue to be defended, within thirty (30) days after notice of such dispute, the **Insurer**, at its expense, shall refer the matter to a Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Law Society, or equivalent organisation, for the State or Territory out of which the **Policy** was issued) who shall determine whether, on the balance of probabilities, the **Insured** is likely to succeed in defending the **Claim** to final resolution or whether the **Claim** should be settled.

If the Senior Counsel determines that the **Claim** should be settled, the **Insured** may elect to continue the defence of that **Claim** provided that the **Insurer's** liability for all **Loss** arising from that **Claim** shall not exceed the amount for which that **Claim** could have been settled plus the **Defence Costs** incurred to the date such determination was provided in writing to the **Insured**.

The Senior Counsel shall determine the amount for which that **Claim** could have been settled at the **Insurer's** expense, taking into account the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action.

8 General conditions

8.1 Alteration to Risk

The **Insured** will give the **Insurer** written notice as soon as reasonably practicable of any material alteration to the risk during the **Policy Period** including but not limited to:

- (a) the **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 which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or
- (b) a material change in the nature of the advice or **Professional Services** offered by the **Insured**.

Where such notice is given and/or where there is any material alteration to the risk, the **Insurer** will be entitled to cancel this **Policy**.

8.2 Territorial Limits

To the extent permitted by law, (which expression is for this purpose taken to include any trade or economic sanctions applicable to either party) coverage extends to anywhere in the world except for any **Loss** and/or **Legal Representation Expenses** resulting from the conduct of **Professional Services** which occurred within the territorial limits of the United States of America or the Dominion of Canada and their territories or protectorates.

8.3 Jurisdictional Limits

Subject to the Territorial Limits clause above, and to the extent permitted by law, coverage extends to **Claims** or **Investigations** anywhere in the world, except for **Claims** or **Investigations**:

- (a) involving the application of the law of the United States of America or the Dominion of Canada or their territories or protectorates;
- (b) brought in a court of law in the United States of America or the Dominion of Canada or their territories or protectorates; or
- (c) arising out of the enforcement of any judgement, order or award made in any court of law in the United States of America or the Dominion of Canada or their territories or protectorates.

8.4 Policy Construction and Interpretation

In this **Policy**, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are merely descriptive and not to aid interpretation;
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (d) references to an amount of money are references to that amount in Australian dollars unless otherwise provided; and
- (e) bolded words used in this **Policy** have the meanings set out in Section 4 (Definitions).

8.5 Retroactive Date

Save with respect to any coverage provided pursuant to Optional Extension 3.2 (Principal's Previous Business) only, if a **Retroactive Date** is specified in Item 6 of the **Schedule**, this **Policy** will not cover, and does not apply to, any **Claim** or **Investigation** where the **Professional Services** leading to such **Claim** or **Investigation** were or were alleged to have been provided or required to be provided, in whole or in part, before the **Retroactive Date**.

8.6 Cancellation

The circumstances and manner in which the **Insurer** may cancel this insurance is governed by the relevant law.

The **Insured** may cancel this insurance at any time by giving fourteen (14) days' notice and provided there have been no notifications made by the **Insured** under this **Policy** the **Insured** will be entitled to a pro rata refund of unearned premium. If the **Insured** has made a notification under the **Policy** then the **Insured** is not entitled to any refund.

In any event the **Insurer** is entitled to retain a minimum premium of calculated on customary short-term rates in the event of cancellation by the **Insured**.

8.7 Pre-Inception Severability, Non-Avoidance and Non-Cancellations

The **Proposal** shall be construed as a separate **Proposal** by each **Insured** and with respect to statements and particulars in the **Proposal**, no statements made or information possessed by any **Insured** shall be imputed to any other **Insured** to determine whether cover is available for that other **Insured**.

Where there is any fraudulent non-disclosure or misrepresentation to the **Insurer**, the **Insurer** irrevocably waives any right to rescind, avoid or cancel the **Policy** as against any innocent **Insured** but the **Insured** who engaged in, or was or were aware of, the fraudulent non-disclosure or misrepresentation shall not be entitled to any indemnity under this **Policy**. The knowledge of any sole **Principal** or sole practitioner, chairman of the board, chief executive officer, chief financial officer or chief operating officer of the **Policyholder** will be imputed to the **Policyholder**. Where there is any non-disclosure or misrepresentation which is not fraudulent, the **Insurer** irrevocably waives any right to cancel the **Policy** or to reduce its liability under the **Policy** in respect of any **Claim** arising from the matter not disclosed or misrepresented.

8.8 Assignment

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

8.9 Subrogation

In the event the **Insurer** makes any payment under this **Policy**, the **Insurer** shall be subrogated to all of the **Insured's** rights of recovery, and the **Insured** shall co-operate with the **Insurer** in securing such rights. The **Insured** 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.

8.10 Address of 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 of the notice was received by the **Insurer** shall constitute the date any such notice was given.

8.11 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.

8.12 Applicable Law Jurisdictions

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**.

8.13 Other Insurance

If any **Loss** or other amount payable by the **Insurer** under the **Policy** is also insured under any other insurance policy:

- (a) entered into by the **Insured**;
- (b) effected on behalf of the **Insured**; or
- (c) under which the **Insured** is a beneficiary,

then to the extent permitted by the *Insurance Contracts Act 1984* (Cth), this **Policy**, subject to its limitations, conditions, provisions and other terms, will only cover **Loss** to the extent that the amount of such **Loss** is in excess of the amount of such other insurance.

This provision does not apply to such other insurance that is written specifically as excess insurance over the **Limit of Liability** provided in this **Policy**.

8.14 Terms of Payment

All premiums due to the **Insurer** under this **Policy** will be paid within ninety (90) days from the **Policy's** inception.

8.15 Presumptive Indemnification

The **Employee** shall have the duty to seek indemnification from the **Policyholder** prior to seeking payment under Insuring Clause 1.

If the **Policyholder** is permitted or required by law to indemnify, or is not prevented by law from indemnifying an **Employee** for **Loss** but fails or refuses to so indemnify an **Employee**, then the **Insurer** shall pay such **Loss** on behalf of such **Employee** subject otherwise to all the terms and exclusions of this **Policy**. In such event the applicable **Retention** shall be paid by the **Policyholder** to the **Insurer**.

8.16 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.

8.17 Confidentiality

In the event of a **Claim** or **Investigation**, the **Insured** must not to disclose the existence, the **Limit of Liability**, the 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**.

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