



 **PRORISK**

Professional Indemnity Insurance Policy

 Policy Wording

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Professional Indemnity Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. This **policy** includes this document and the General Terms & Conditions attached to this **policy** and this **policy** should be interpreted with the General Terms and Conditions. **Our** total aggregate liability under each insuring clause will not exceed the sub-limits specified in the **schedule**. Each Insuring Clause and Extension of Cover is subject to the **excess** specified in the **schedule**.

SECTION 1: INSURING CLAUSES

1.1 Civil Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, in relation to the provision of **professional services**.

1.2 Employee Fidelity Cover

We will pay the **insured entity** for any **direct financial loss** committed by an **employee**, which is first **discovered** during the **insurance period** or, if applicable, during the **discovery period**.

1.3 Investigation Costs Cover

We will pay on behalf of an **insured** their **loss** arising from an **investigation** commenced during the **insurance period** or, if applicable, during the **discovery period**, by an **official body** into the affairs of the **insured** in relation to the provision of **professional services**.

1.4 Statutory Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** made against the **insured** during the **insurance period** or, if applicable, during the **discovery period**, by an **official body** for a **statutory liability wrongful act**.

SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** specified in the **schedule**.

Extensions Applicable to All Insuring Clauses

2.1 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not to be covered or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

2.2 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **insured** creates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage due to this condition, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. We may then, with reasonable consideration, agree to extend cover in return for the payment of additional premium and any amendments to the terms of this **policy**. Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

2.3 Civil Penalties

The definition of **loss** is extended to include any civil fines or civil penalties that are insurable under the law applicable to this **policy**.

2.4 Continuity of Cover

Notwithstanding Exclusions 3.11 (Prior Policy) and 3.12 (Prior or Pending Proceedings), coverage is provided for **claims** or circumstances which were required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **policy** is a renewal or replacement of, provided always that:

- (a) the **claim** or circumstance which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) occurring after the **continuous cover date** specified in the **schedule**; and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **us** in respect of the **claim** or circumstance; and
- (c) the **insured** has maintained without interruption professional indemnity insurance or similar insurance with an insurer from the **continuous cover date** stated in the **schedule**; and
- (d) the **insured** has notified such a **claim** or circumstance under the prior professional indemnity insurance or similar insurance and is unable to obtain cover as it has been notified after such policy expired;

the cover provided by this Extension will be in accordance with all the terms and conditions (including, for the avoidance of doubt, the **limit of liability** and **excess** amounts, or any sub-limit, including the reduction of such **limit of liability** arising from any other claims under that policy) of the policy under which the **claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **claim** or circumstance than the provisions of this **policy**.

2.5 Costs Exclusive Excess

Where the **excess** is described in the **schedule** as “exclusive of **costs**”, the excess will not apply to **costs**. However, the **excess** will apply to all other types of **loss**.

2.6 Costs in Addition

We agree to pay to or on behalf of the **insured** any **costs** either incurred by **us** or the **insured** with our prior written consent which are in addition to the **limit of liability**, but only up to an amount equal to **limit of liability**. If the **loss** (excluding **costs**) exceeds the **limit of liability**, then we will pay the **proportionate costs**. The maximum **we** will pay for any **costs** that are incurred by the **insured** is an amount up to, but not exceeding the **limit of liability**. If any Extension to this **policy** provides a sub-limit, such a sub-limit is inclusive of **costs** unless otherwise stated expressly.

This Extension does not apply to any **claim** arising out of or in connection with proceedings brought in the **USA** or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of the **USA** or Canada or their respective territories or protectorates. Cover for this Extension is subject to the payment of the **excess**. Cover for this Extension is subject to the exhaustion of limits of any policy which is in excess of the original limit of liability under this **policy**, other than any similar cost in addition provisions under such excess policies.

2.7 Court Attendance Costs

We will pay the **insured** for **court attendance costs**.

2.8 Defamation

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, which results from the **insured** actually or allegedly making a defamatory statement, disparaging or harming the reputation or character of any natural person or organisation in relation to the provision of **professional services**, including but not limited to on the **internet, intranet** or **extranet**. This does not include:

- (a) any failure of the **insured** to remove any statement or publications from any **internet, intranet** or **extranet** site; or
- (b) any statement or publication made to or contained on any **open site** or **moderated site** by the **insured** and/or any **employee** or third party.

2.9 Discovery period following a change in exposure

If there is a **change in exposure**, **we** will only pay in respect of conduct wholly committed before the **change in exposure** and which is otherwise covered by this **policy**.

You may, up to thirty (30) days after the **change in exposure**, request an offer from **us** for a **discovery period** of up to eighty-four (84) months provided that:

- (a) the extended cover only applies in respect of **dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**;
- (b) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within thirty (30) days of the expiration of the **insurance period** and is only effective upon payment of the additional premium;
- (c) **you** will not have the right to purchase the twelve (12) month **discovery period** under this Extension in the event of any **change in exposure**;
- (d) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided;
- (e) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension;
- (f) any **premium** earned will be non-refundable; and
- (g) this Extension will not be available in the event of any actual or alleged insolvency, bankruptcy liquidation or similar occurrence of the **policyholder**.

Upon such request and following the receipt by **us** of any requested information, **we** will offer to extend the cover under this **policy** for a **discovery period** of up to eighty-four (84) months on such terms and conditions and at such premium as **you** and **us** may agree. Any additional premium will be non-refundable. Any extended cover will only apply to **claims** or any **investigation** arising from conduct before the **change in exposure** and which is notified to **us** before the expiry of the **discovery period**.

2.10 Discovery period following non-renewal

If, on expiry, any coverage clause or component under this **policy** is neither renewed nor replaced with a policy of insurance providing such coverage with any insurer, the **policyholder** is entitled to a **discovery period** of:

- (a) thirty (30) days automatically for no additional premium;
- (b) subject to the payment of an additional premium of 100% of the **premium**, twelve (12) months from the expiration of the **insurance period**; or
- (c) up to eighty-four (84) months, as may be requested from the expiration of the **insurance period** on such terms and for a **premium** that will be determined by **us**;

provided that:

- (a) the extended cover only applies in respect of **dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**;
- (b) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within thirty (30) days of the expiration of the **insurance period** and is only effective upon payment of the additional premium;
- (c) **you** will not have the right to purchase the twelve (12) month **discovery period** under this Extension in the event of any **change in exposure**;
- (d) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided;
- (e) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension;
- (f) any **premium** earned will be non-refundable; and
- (g) this Extension will not be available in the event of any actual or alleged insolvency, bankruptcy liquidation or similar occurrence of the **policyholder**.

2.11 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to 10% of the **limit of liability** (or relevant sub-limit, whichever is the lower amount) in the aggregate for all **claims** made during the **insurance period**, provided consent is obtained from **us** within thirty (30) days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

2.12 Intellectual Property

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, which results from the actual or alleged infringement of copyright, trademarks, registered designs in relation to the provision of **professional services**. However, this excludes the actual or alleged infringement of any patents.

2.13 Joint Venture Liability

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, resulting from the provision of **professional services** as a joint venture. **We** will not cover any liability of the joint venture partner.

2.14 Loss of Documents

We will pay the reasonable costs and expenses incurred by the **policyholder** in replacing or restoring **lost documents** for which the **policyholder** is legally responsible where the **lost documents** are first **discovered** to have been lost during the **insurance period**, and the failure to replace or restore such **lost documents** to do so would likely cause a **claim** otherwise covered under this **policy**.

2.15 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

2.16 Reinstatement of the Limit of Liability

We agree to reinstate the **limit of liability** where a **claim** erodes the **limit of liability** in whole or in part, up to the **maximum aggregate limit of liability**.

Cover for this Extension is subject to the following:

- (a) the exhaustion of limits of any policy which is in excess of the original **limit of liability** under this **policy**, other than any similar reinstatement provisions under such excess policies;
- (b) the reinstated **limit of liability** will only apply to **claims** or **losses**, which do not arise out of and do not have any connection with the originating cause of any **claim** or **loss** already paid or payable under the original **limit of liability**;
- (c) all other terms, conditions, exclusions and limitations of the **policy** will continue to apply in the same manner, in respect of any **claim** or **loss** to which the reinstated **limit of liability** applies; and
- (d) there will be no reinstatement of sub-limits, except if the original **limit of liability** is reinstated.

No cover is provided under this Extension for any **claim** arising out of or in connection with proceedings brought in the **USA** or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of the **USA** or Canada or their respective territories or protectorates.

The **maximum aggregate limit of liability** available under this **policy** is specified in the **schedule**.

2.17 Technology Services

Notwithstanding Exclusion 3.5 (Cyber), we will pay the **insured** against **civil liability** resulting from any **claim** arising from the performance of **technology services** where the **technology services** are integral to the provision of **professional services**.

2.18 Trade Practices (Fair Trading) Legislation Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, for any actual or alleged breach of any provision of the *Competition and Consumer Act 2010* (Cth) or any section(s) of the Fair Trading Legislation in any State or Territory of the Commonwealth of Australia in relation to the provision of **professional services**.

2.19 Vicarious Liability

We agree to indemnify **you** for **your** vicarious liability for any conduct of **your**:

- (a) agents;
- (b) contractors; or
- (c) **employees**;

to the extent that **you** are liable and would otherwise be covered under the **policy** had **you** undertaken the conduct.

Extensions Applicable to Insuring Clause 1.2 – Employee Fidelity Cover Only

2.20 Direct Financial Loss Investigator Costs – Policyholder

We agree to reimburse the **policyholder** for their costs of hiring a **loss investigator** selected by the **policyholder** with **our** prior written consent (which will not be unreasonably delayed or withheld), which they incur in order to provide a **proof of loss** to **us**, following the **discovery** of a **direct financial loss** during the **insurance period**.

2.21 Direct Financial Loss Investigator Costs – ProRisk

If the **policyholder** elects not to use their own **loss investigator**, **we** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide **us** with their **proof of loss**, following the **discovery** of a **direct financial loss** during the **insurance period**.

Value Added Benefits

2.22 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the **insured's** insurance.

2.23 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to the defence, investigation or mitigation of a matter which **we** have accepted as notification of circumstances which may give rise to a **claim**. **We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of the defence of any **claim** covered by this **policy**.

2.24 Whistleblower Hotline

The **insured** and their internal and external stakeholders are entitled to access and use the ProRisk Whistleblower Hotline throughout the **insurance period**.

SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment:

3.1 Abuse

on account of any **claim** based upon, arising from or in consequence of, or in any way connected with any actual or alleged verbal, physical or sexual abuse, molestation, assault, battery or any violence committed by an **insured person**.

3.2 Alcohol, Illegal Drugs, Narcotics and Intoxicants

on account of any **claim** based upon, arising from or in consequence of **you** being under the influence of alcohol, illegal drugs, narcotics and intoxicants.

3.3 Assumed Liability

on account of any **claim** based upon, arising from or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to any liability which is, or would have been, implied by law in such agreement or would have separately arisen.

3.4 Bankruptcy or Insolvency

based upon, arising from or in consequence of the actual or alleged bankruptcy, insolvency, administration, or receivership of any **insured entity**.

3.5 Bodily Injury

on account of any **claim** based upon, arising from or in consequence of, directly or indirectly, the death of, or bodily injury, sickness, disease, death or emotional distress or mental anguish, of or illness to, any person, unless it results directly from the **insured's** provision of the **professional services**.

3.6 Cyber

on account of any **claim** based upon, arising from or in consequence of any intrusion due to the failure or the circumvention of the security of the **insured's** computer systems, which results in any unauthorised access, unauthorised use, hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage, deletion or disclosure of data (including data of a third party) stored on any computer system operated by the **insured**.

3.7 Directors & Officers Liability

- (a) on account of any **claim** brought against an **insured person** where such **claim** is made solely by reason of the person holding the position, or having acted in the position, of **director** or **officer**; or
- (b) on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by Sections 182, 183, 588G, 601FD, 601FE, 601JD of the *Corporations Act 2001* (Cth) or any similar law, and any amendments, consolidations or enactments of that Act, including duties of **directors, officers** and **employees** to not misuse their position or information, a **director's** duty to prevent insolvent trading, duties of a member of a scheme's compliance committee and the duties of **officers** and **employees** of a responsible entity.

3.8 Dishonest or Wilful Acts

on account of any **claim** based upon, arising from or in consequence of the:

- (a) dishonest, fraudulent or criminal acts, errors or failure to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

of an **insured**.

We will not rely on this Exclusion until the conduct in question is established by a final judgment, or any other final adjudication, or a written or verbal admission by any **insured** that the relevant conduct did in fact occur. This Exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001* (Cth) applies. This Exclusion will not apply in respect of cover afforded under Insuring Clause 1.2 (Employee Fidelity Cover).

3.9 Employment Liability

on account of any **claim** based upon, arising from or in consequence of an **employment practices wrongful act** or liability for any **personal injury** to an **employee**.

3.10 Insured versus Insured

on account of any **claim** brought or maintained by or on behalf of any **insured**.

3.11 Occupier's Liability

on account of any **claim** based upon, arising from or in consequence of the actual or alleged use, occupation, ownership, use, or lease of any real property, by or on behalf of an **insured**.

3.12 Prior Policy

based upon, arising from, in consequence of or attributable to any **claim** or circumstances of which notice has been given or was required to be given in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), under any policy of insurance which this **policy** renews, replaces or follows in whole or in part, or for which notice could have been given if such a policy had been in force.

3.13 Prior or Pending Proceedings

arising from any **claim** based upon, arising from or in consequence of any writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against the **insured** which existed prior to or were pending at the earlier of:

- (a) the inception date of this **policy**;
- (b) the original date upon which insurance providing like coverage to this **policy** was affected and continually maintained up to the inception date of this **policy**;

where such a **claim** arises from any matter, fact, situation or circumstance substantially the same as those underlying or alleged in any such claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment.

3.14 Products Liability

- (a) on account of any **claim** based upon, arising from or in consequence of the withdrawal or recall of any **products**;
- (b) involving any costs incurred in the repair, reconditioning, modification or replacement of any **product** or part of a **product** and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement; or
- (c) based upon, arising from or in consequence of the failure of a **product** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by **you**.

3.15 Property Damage

on account of any **claim** based upon, arising from or in consequence of, directly or indirectly, **property damage**, unless it results directly from the **insured's** conduct of the **professional services**.

3.16 Trading Debts

on account of any **claim** for any trading debt or business liability of an **insured** or any guarantee given by the **insured** for a debt.

3.17 Territorial Limits

- (a) on account of any **claim** brought and maintained; or
- (b) **direct financial loss** that occurs;

outside of the **territorial limits**.

3.18 Vehicles

- (a) arising from the ownership, possession or use by or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than claims arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- (b) arising from the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft or other vehicle, other than claims under the Insuring Clauses or the Extensions of Cover, arising from the emergency transportation of any patient accompanied by the **insured**.

3.19 Workmanship

- (a) on account of any **claim** based upon, arising from or in consequence of the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by **you** or on **your** behalf;
- (b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection with those services) by **you** or on **your** behalf.

Exclusions specific to Insuring Clause 1. 2 (Employee Fidelity Cover) only

3.20 Employee Fidelity Exclusions

We will not be liable under Insuring Clause 1.2 (Employee Fidelity) of this **policy** for any **direct financial loss**:

- (a) which can only be proved by:
 - (i) a profit and loss computation or comparison; or
 - (ii) a comparison of inventory records with an actual physical count;
- (b) arising from the accessing and dissemination of any confidential information, including but not limited to patents, trademarks, copyrights, customer information, computer programs and trade secrets;
- (c) arising from any **dishonest act** committed after any **director** or **officer, partner** or proprietor has become aware of a previous **dishonest act**, provided that this Exclusion will not apply if the **director** or **officer** or **partner** or proprietor who discovers any such **dishonest act**, acts in collusion with the **employee**;
- (d) arising from any **dishonest act** committed by a person who is either the proprietor or owns or controls more than 5% equity in the **policyholder**;
- (e) not directly associated with the incident that caused **you** to claim, including but not limited to loss of income, interest or dividends not realised or received by the **policyholder** or by any other person(s) or company because of a **direct financial loss**;
- (f) arising from any **dishonest act** committed by any **director** or **officer** or **partner** or proprietor, whether acting alone or in collusion with others;
- (g) arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like, unless the **direct financial loss** is a result of a **dishonest act** which results in the **employee** making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (h) arising from any extortion or kidnap and ransom;
- (i) by an **employee** (acting alone or in collusion with others) taking property from the **policyholder's** bank account (or other similar account held with an Authorised Deposit Taking Institution) where the **employee** is able to sign cheques, execute transfers or otherwise withdraw funds from such bank account (or other similar account held with an Authorised Deposit Taking Institution) without a second signatory or similar approval for that withdrawal by another **insured person** (or delegate of another **insured person**); or
- (j) arising from a failure of an **insured person** to independently verify a request by a payee (or an alleged payee) to change or redirect payment to a different bank account (or similar account held with an Authorised Deposit Taking Institution).

Exclusions specific to Insuring Clause 1.3 – Investigation Costs Cover and 1.4 – Statutory Liability Cover

3.21 Certain Acts

We will not be liable under Insuring Clause 1.3 (Investigation Costs Cover) and 1.4 (Statutory Liability Cover) of this **policy** to make any payment for any **loss** on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by the Fair Trading Acts of the States and Territories, the *Competition and Consumer Act 2010* (Cth) and any similar law of any State or Territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and

deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services.

SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

4.1 Act means any Act of any parliament or legislative assembly of the Commonwealth of Australia, and/or of any State or Territory of Australia, including any:

- (a) subordinate or delegated legislation or code, rules, regulations, or bylaws made under those Acts; and
- (b) any amendment, enactments, or consolidation of any of the above Acts or any successor, replacement or equivalent legislation.

4.2 Civil liability means the actual or alleged liability of the **policyholder** other than a criminal liability.

4.3 Claim means:

- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against an **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding, including but not limited to a conciliation, mediation or arbitration;
- (c) a writ, Statement of Claim, or other similar legal proceeding commenced in writing;
- (d) any formal written notice of an **extradition proceedings** or execution of a warrant for arrest against the **insured** alleging a **statutory liability wrongful act**, but only with respect to Insuring Clause 1.4 (Statutory Liability Cover); or
- (e) an **investigation**;

by a third party.

4.4 Costs means **investigation costs** and all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

Costs does not mean any overheads of an **insured entity** or **employment related benefits** associated with the remuneration of **insured persons**.

4.5 Court attendance costs means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured**, in relation to a covered **claim** under this **policy**.

4.6 Direct financial loss means loss of **property** sustained by the **policyholder** directly resulting from a **dishonest act**.

It does not include:

- (a) past or future economic loss, including the loss of salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**;
- (c) physical destruction to any **premises**, or to any property situated on the **premises**;
- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **direct financial loss** covered by this **policy**;
- (f) recovery costs;
- (g) interest or other loss that is not directly associated with the incident that caused **you** to claim;

- (h) the personal assets or property of an **insured** (for the avoidance of doubt, this includes an **insured's** property that would otherwise be covered under a home and contents policy); or
- (i) loss of property or other consideration surrendered or intended to be surrendered as payment or on behalf of an **insured person**, unless the **insured** agrees that such payment is on their behalf.

4.7 Director or officer means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of an **insured entity**;
- (b) a shadow director of an **insured entity** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) an **employee** of an **insured entity** who:
 - (i) carries out a managerial or supervisory function for the **insured entity**;
 - (ii) is joined as a party to any **claim** against any person defined above; or
- (d) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of an **insured entity** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of an **insured entity** or the assets of an **insured entity**.

4.8 Discovery period means the additional period in which **you** are able to notify **us** of a **claim** or **direct financial loss** resulting from conduct wholly committed before the end of the **insurance period**, the duration of which is specified in:

- (a) Extension 2.8 (Discovery Period following a change in exposure); or
- (b) Extension 2.9 (Discovery Period following non-renewal);

commencing from the date of expiry of the **insurance period**. The **discovery period** will be applied to this **policy** by way of Endorsement and will commence from the date of expiry of the **insurance period**.

4.9 Dishonest act means any fraudulent or dishonest act committed by an **employee** (acting alone or in collusion with others), which causes the **policyholder** to sustain a **direct financial loss**.

4.10 Documents means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms, client records and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data, but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument, or **property**.

4.11 Employee means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **insured** who is employed under a contract of service with the **insured** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **insured** under the direction and control of the **insured**;
- (c) students, who are doing work for the **insured**, at the **insured's** direction, regardless of whether they are paid, or not; or
- (d) in relation to Insuring Clause 1.2 (Employee Fidelity Cover), the **employee** must also be under the direction and control of the **insured**.

Employee does not include independent contractors or labour hire personnel.

4.12 Employment practices wrongful act means any actual or alleged violation of employment laws, workers compensation laws or any other employment related obligation or matter, including but not limited to any actual or alleged:

- (a) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy;
- (b) unlawful termination of employment;

- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices;
- (i) breach of employment contract; or
- (j) **personal injury**;

with respect to any natural person who was, now is or becomes an **employee** of the **policyholder**, including prospective **employee**.

4.13 Employment related benefits means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

4.14 Extradition proceedings means any action or proceeding commenced in any jurisdiction seeking the extradition of an **insured person**. Any such action or proceeding will be deemed for the purposes of this **policy** to commence upon the receipt by an **insured person** of notice in writing from an official governmental, regulatory or prosecuting body stating that a request for extradition of an **insured person** has been made or will be made.

4.15 Extranet means a restricted-access group of inter-connected electronic networks accessible via a gateway or portal.

4.16 Insured, you and your means:

- (a) the **policyholder**;
- (b) any **subsidiaries** of the **policyholder**; or
- (c) any **insured persons**.

4.17 Insured entity means:

- (a) the **policyholder**; and
- (b) any current **subsidiaries** of the **policyholder**.

4.18 Insured person means:

- (a) any **director** or **officer**;
- (b) **partner**; or
- (c) **employee**.

4.19 Internet means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.

4.20 Intranet means an electronic network owned and controlled by the **insured** which contains information about the business of the **insured** and is only accessible to designated individuals including **employees** of an **insured entity** and not to the general public.

4.21 Investigation means any formal investigation, inquiry or examination by an **official body**, commenced in writing, which the **insured** is:

- (a) legally compelled to comply with; or
- (b) requested to comply with and has the potential to have an adverse impact on the **insured's** ability to provide **professional services**.

An **investigation** does not include a risk management visit (or equivalent) by an **official body**.

4.22 Investigation costs means reasonable legal fees, costs and expenses incurred by the **insured** for their representation (or in preparation for their representation) at an **investigation** during the **insurance period** or, if applicable, the **discovery period**.

Investigation costs does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

4.23 Loss means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

Loss does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award in any **claim**;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) fines or penalties;
- (e) **employment related benefits**;
- (f) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices wrongful act** or the costs of reinstatement of any **employee**;
- (g) restitutionary loss, including any refund of fees;
- (h) internal or overhead expenses of any **insured**;
- (i) the cost of complying with any non-monetary order or non-monetary relief;
- (j) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw; or
- (k) liquidated damages.

4.24 Loss investigator means a suitably qualified forensic accountant or other consultant, who does not have a conflict of interest, retained to establish the nature and extent of any **direct financial loss**.

4.25 Lost documents means **documents** that cannot be located following a diligent search, or **documents** that have been destroyed or damaged.

4.26 Maximum aggregate limit of liability means the total amount payable under each Coverage Section of this **policy** as stated in the **schedule**, including all reinstatements.

4.27 Moderated site means any **internet**, **intranet** or **extranet** site where content is checked for compliance with pre-set content standards before or as soon as reasonably practicable after it is published.

4.28 Official body means any regulator, state or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **insured entity** or the conduct of an **insured person** in their insured capacity.

4.29 Open site means any **internet**, **intranet** or **extranet** site on which content can be published by contributing parties without registration.

4.30 Partner means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** in the business as specified in the **schedule**, in his or her capacity as such.

4.31 Personal injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

- 4.32 Premises** means the place or places where the **policyholder** conducts their business and provides **professional services**.
- 4.33 Product liability** means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** caused by or arising out of any **products** sold or otherwise supplied by **you** to a third party.
- 4.34 Products** means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **you** or on **your** behalf, including discontinued **products**.
- 4.35 Professional services** means the professional service provided by the **insured** as stated in the **schedule** and/or any endorsements and which the **insured** is licensed and or registered to provide, where licensing and/or registration is required by law.
- 4.36 Proof of loss** means documented evidence that the **policyholder** has sustained a **direct financial loss**. A **proof of loss** may include the following, however, these items should not be seen as limiting the information which could form part of the **proof of loss**:
- (a) the policy number of this **policy**;
 - (b) the name of the alleged perpetrator (if known);
 - (c) a description of the events which led to the **discovery** of the **direct financial loss**;
 - (d) a chronology of all relevant facts;
 - (e) a description of the alleged **employee** or third party's modus operandi;
 - (f) Statutory Declarations from witnesses;
 - (g) complete documentary evidence to support that the **policyholder** has sustained a **direct financial loss**, including but not limited to receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
 - (h) photographs, video or closed circuit television footage of **direct financial loss** occurring;
 - (i) any internal investigation reports;
 - (j) police report/s and/or any statement/s made to the police;
 - (k) a signed confession; and/or
 - (l) any other document or other form of evidence which may be relevant to the quantification of a **direct financial loss**.
- 4.37 Property** means money, securities and other property owned by the **policyholder** or for which it is legally liable. **Property** does not include the personal assets or property of the **policyholder** (for the avoidance of doubt this includes an **insured's** property that would otherwise be covered under another form of contents insurance).
- 4.38 Property damage** means physical loss, damage or destruction of tangible property owned by a third party, including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other **property**.
- 4.39 Proportionate costs** means the proportion of **loss** (excluding **costs**) that is paid under the **policy** in comparison to the total amount of **loss** (excluding **costs**).
- 4.40 Public relations costs** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).
- 4.41 Statutory liability wrongful act** means an actual or alleged breach of any **Act** in relation to the provision of **professional services**.
- 4.42 Technology services** means the following services:
- (a) website design;
 - (b) computer software programs, applications or systems;
 - (c) digital model, including Building Information Modelling (BIM) or other equivalent design systems;
 - (d) 3D printing technology; or

- (e) use of drones or unmanned aircraft, provided always that such use is performed by a Civil Aviation Safety Authority (CASA) licenced operator or an equivalent Authority, and is conducted in compliance with the relevant guidelines as specified by the Civil Aviation Safety Authority (CASA).



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 **PRORISK**



General Terms & Conditions

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SECTION 1: IMPORTANT INFORMATION

1.1 This Policy

The **policy** wording, **schedule** and the General Terms and Conditions, together set out the cover provided, the amount insured and the terms and conditions of **your** insurance.

Please read these documents carefully and keep them in a safe place.

Words appearing in bold text have defined meanings in the **policy**. When reading the **policy** please make sure that **you** refer to the various definitions to ensure that **you** understand what is being said.

Where **you** have purchased more than one **policy** from **us** these General Terms and Condition need to be read together as one document for each and every **policy** purchased. Each **policy** is a separate policy of insurance.

Your insurance broker has arranged this **policy** for **you**. If **you** have any questions about **your** cover, or **you** wish to contact **ProRisk**, please contact **your** Insurance Broker for assistance.

Coverage commences upon payment of the **premium**.

1.2 Limit of Liability and Excess

The **limit of liability** is the maximum liability for all **loss** under the **policy** during the **insurance period**.

Any sub-limit of liability specified in the **policy** or **schedule** will be part of and not in addition to the **limit of liability**. If more than one **limit of liability** or sub-limit of liability is applicable to a claim, then the total payment by **us** will not exceed the highest of the applicable **limits of liability** or sub-limits of liability.

We are only liable to pay to the extent that any loss under the **policy** exceeds the amount of the **excess**.

All covered loss arising out of, based upon, in connection with, or otherwise attributable to: the same act, error, failure to act, event, circumstance or **claim**; or causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that have as a common nexus any fact, circumstance, situation or event, will constitute a single policy claim for the purposes of this **policy** regardless of whether the same or different parties, claimants or causes of action are involved. In this case, the **excess**, which will be the highest applicable, will apply once to any such single policy claim and the single applicable **limit of liability** or sublimit of liability will apply to such single policy claim.

All causally connected or interrelated acts, errors, failures to act, events, circumstances or **claims** that constitute such a single policy claim shall be considered to have occurred, been discovered or made (as applicable) and reported to **us** at the time the required notice with respect to the first of such acts, errors, failures to act, events, circumstances or **claims** was first given to **us**.

Where an **insured** is entitled to indemnity for a claim under one or more insuring clauses, sub-limits or extensions under the **policy**, then the **insured** is only entitled to claim under one of those insuring clauses, sub-limits or extensions and must elect under which one they choose to seek indemnity.

1.3 ProRisk

ProRisk is an underwriting agency and has authority to bind this **policy** on behalf of the **underwriters**.

1.4 Claims Made Policy (Facts Prior to Commencement of Policy)

A claims made policy does not provide cover for any **claims** made against **you** during the **insurance period** if at any time prior to the commencement of the **insurance period** **you** were aware of facts which might give rise to those **claims** being made against **you**.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the **insured** gives notice in writing to the insurer during the **insurance period** of facts that might give rise to a **claim** against the insured, the

insurer cannot refuse to pay a **claim** which arises out of those facts, by reason only that the **claim** is made after the **insurance period** has expired.

This means that if during the **insurance period** **you** became aware of any facts that might give rise to a **claim** it is in **your** interest to inform **us** of those facts. This will serve to protect **your** rights to make a later **claim** that has arisen from those notified facts.

1.5 Insurer may not refuse to pay a claim in certain circumstances

Section 54 of the *Insurance Contracts Act 1984* provides that **we** may not refuse to pay a **claim** in certain circumstances:

- (a) by reason only of an act (or failure to act) of **you** or another person, if that act (or failure to act), which occurred after the **policy** was entered into, did not cause any part of the **loss** giving rise to the **claim**. For example, if **you** have failed to satisfy a technical requirement of the **policy** but able to prove that this technical breach could not reasonably be said to have caused or contributed to the **loss** that is the subject of **your** claim, **we** may not refuse the **claim** based on the technical breach on **your** part; or
- (b) where the act was necessary to protect a person's safety, to preserve property or if it was not reasonably possible for the person not to do the act.

We can reduce **our** liability for the **claim** by the amount that fairly represents the extent to which **we** were prejudiced as a result of **your** actions or **your** failure to act.

1.6 Your Duty of Disclosure

Section 21 of the *Insurance Contracts Act 1984* provides that before **you** enter into a contract of general insurance with an insurer, **you** have a duty to disclose to the insurer every matter that **you** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to **us** before **you** renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of a matter:

- (a) that diminishes the risk to be undertaken by **us**;
- (b) that is of common knowledge;
- (c) that **we** know, or in the ordinary course of business, ought to know; or
- (d) where **we** waive **your** duty of disclosure.

1.7 Non-Disclosure

If **you** fail to comply with **your** duty of disclosure, **we** may be entitled to reduce **our** liability under the **policy** or **we** may cancel the contract. If **your** non-disclosure is fraudulent, **we** may also have the option of avoiding the contract from its beginning.

1.8 Waiver of Rights of Subrogation

You must not, without **our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **you** may have in respect of any **claim** covered under this **policy**. Our consent will not be unreasonably withheld. Further, **you** must not do anything or fail to do anything which excludes, limits or prejudices **our** rights of subrogation. This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

1.9 Privacy Statement

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information.

We collect personal information about **you** to enable **us** to provide **you** with relevant products and services, to assess **your** application for insurance and, if a contract is entered, to enable **us** to provide, administer, and manage **your policy**, and to investigate and handle any claims under **your policy**. **We** may disclose **your** information to third parties (who may be located overseas), such as **underwriters**, lawyers, claims adjusters, and others appointed by **ProRisk** or by **underwriters** to assist **us** in providing relevant products and services. **We** may also disclose **your** information to people listed as co-insured on **your policy** and to

your agents or broker. By providing **your** personal information to **us**, **you** consent to **us** making these disclosures.

If **you** do not provide all or part of the information required, **we** may not be able to provide **you** with **our** products and services, consider **your** application for insurance, administer **your policy**, assess or handle **claims** under **your policy**, or **you** may breach **your** duty of disclosure.

When **you** provide **us** with personal information about other individuals, **we** rely upon **you** to have made them aware of that disclosure, and of the terms of the **ProRisk** Privacy Statement, and to have obtained their consent. For a copy of the **ProRisk** Privacy Statement or to request access to or update **your** personal information, contact the Privacy Officer at **ProRisk** by email: enquiries@prorisk.com.au or by mail at the address shown on this **policy**.

1.10 General Insurance Code of Practice

ProRisk and **underwriters** proudly support the General Insurance Code of Practice ('the Code').

The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from the website www.codeofpractice.com.au.

This **policy** is compliant with the General Insurance Code of Practice.

1.11 Financial Hardship

We will review any Financial Hardship application in accordance with the General Insurance Code of Practice and any applicable guidelines.

1.12 Terms and Conditions

Except for these General Terms and Conditions or unless stated to the contrary in any **policy**, the terms and conditions of each **policy** will apply only to that **policy**. The General Definitions apply to all **policies** in addition to any specific definitions that may apply in each **policy**. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any **policy**, the terms and conditions of such **policy** will prevail for purposes of that **policy**. Any words in bold print in these General terms and Conditions not defined will have the meaning indicated in the definitions section of the relevant **policy**.

SECTION 2: CLAIM REPORTING

Each policy wording to which these General Terms and Conditions apply will specify in the Insuring Clause or Extension the basis for claims reporting and notification which is outlined in clauses 2.1 (Notification – Claims Made and Notified), 2.2 (Notification – Discovery), and 2.3 (Notification – Occurrence Based)

2.1 Notification

The **policyholder** will notify us of any **claim**, **investigation**, **occurrence** or **direct financial loss** or other matter that may be claimed under this **policy** as soon as is reasonably practicable after they first became aware of such **claim occurrence** or **direct financial loss** and within the **insurance period** or **discovery period** (if a **discovery period** is operable).

Such written notice shall satisfy all terms of the **policy** and will include the following, so far as is reasonably practicable and so far as the relevant **policyholder** is aware:

- (a) the identities of all parties involved, if known;
- (b) an outline of the facts alleged;
- (c) an estimate of the likely quantum of any loss; and
- (d) the policy number under which the notification is made.

2.2 Written Notice

Notice to **us** will be given in writing, and delivered to:

The National Claims Manager
ProRisk
Level 2, 115 Bridge Road
Richmond, VIC, 3121
Email: newclaims@prorisk.com.au

Any written notice will be considered effective from the date such notice is first received by **us**.

SECTION 3: CONSENT AND LEGAL REPRESENTATION

3.1 Consent

The **insured, insured person** or any agent of the **insured's** must not:

- (a) incur any costs or expenses or make any payment that is or may be covered under this **policy** without **our** prior written consent (unless expressly stated otherwise by an Extension of Cover), such consent not to be unreasonably withheld. **We** accept no liability for any costs or expenses incurred or payment made by an **insured, insured person** or any agent of the **insured** without **our** prior consent;
- (b) take any action which is prejudicial to **our** interests; or
- (c) admit or assume liability, consent to any judgment, enter into any settlement agreement or settle any **claim**.

This term is subject to section 54 of the *Insurance Contracts Act 1984* (Cth) which limits **our** right to refuse to pay a **claim**.

3.2 Legal Representation

We will be entitled at any time, but not obligated, to take over and conduct in the **policyholder's** name:

- (a) the defence of any suit, legal proceeding or action the subject of a **claim**;
- (b) the investigation of any **claim**; or
- (c) the handling of any **investigation**.

We may appoint legal representatives of **our** choice for these purposes.

We shall not agree to any settlement in connection with any **claim** unless **we** have reasonably engaged with **you** and considered **your** interest in relation to defending the **claim**.

3.3 We will advance **costs** as incurred prior to a final determination or adjudication or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not covered or is excluded under this **policy** then all such **costs** already advanced must be repaid to **us**.

3.4 The insured will provide its reasonable co-operation and any information that **we** may reasonably require to assist **us** in defending any **claim** against the **insured**.

3.5 Legal advisers retained by **us** to act on the **insured's** behalf in relation to any **claim** or **investigation** are at liberty to disclose to **us** any information they receive in that capacity, wherever they obtain it from, including from the **insured**. By claiming under this **policy**, the **insured** authorises such legal advisers to disclose this information to **us** and waives all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **us**.

3.6 The legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation**, may provide advice to **us** on any issue regarding **our** liability to indemnify the **insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** or **investigation** on behalf of both **us** and the **insured**.

3.7 The insured agrees that all communications between **us** and the legal advisers retained by **us** to act in the

conduct of the investigation, defence or settlement of any **claim** or **investigation** in relation to the **insured's** entitlement to indemnity from **us** are privileged between **us** and the legal advisers and the **insured** agrees that it is not entitled, under any circumstances, to access or obtain any such communications.

- 3.8** If any actual or apparent conflict arises between the interests of the **insured** and **us**, the legal advisers retained by **us** to conduct the investigation, defence or settlement of any **claim** or **investigation** may cease acting on the **insured's** behalf and may continue to act on **our** behalf in relation to any dispute between **us** and the **insured** with respect to the **insured's** entitlement to indemnity from **us**.
- 3.9** **We** will not agree to any settlement of any **claim** without consultation with **you**. If **we** recommend the settlement of a **claim** for a certain amount, and the **claim** can be settled for that amount but **you** refuse to agree to the settlement and decide to contest the **claim**, then **we** are only liable under this **policy** for no more than:
- (a) the recommended settlement amount; and
 - (b) **costs** up to the date of the **insured's** refusal to settle.
- 3.10** **You** may conduct the defence of any suit, legal proceedings or action the subject of a **claim** or **investigation** without **our** written consent, if the settlement amount and any costs for such **claim** does not exceed the **excess**. **You** are required to provide **us** with reasonable progress reports and we reserve the right to take over the conduct of the defence of the **claim** or **investigation** should we consider it be reasonable to do so.

SECTION 4: GENERAL CONDITIONS

4.1 Allocation

Our liability under this **policy** is limited to the proportion of **loss**, **direct financial loss**, or any other form of covered loss or loss that could be covered under the **policy** which is a fair and equitable allocation as between:

- (a) covered and uncovered parties; and/or
- (b) covered and uncovered matters; having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties.

Only **loss** incurred by covered parties in relation to covered matters will be covered by this **policy** and is subject always to the terms and conditions of this **policy**. **We** will use our best endeavours to agree with the **insured** upon a fair and equitable allocation of the proportion covered under the **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of New South Wales.

The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination, **we** will agree to pay **loss** on an interim basis at the percentage, which **we** contend should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination.

4.2 Alteration or Assignment of Interest

No change in, modification of, or assignment of interest under this **policy** will be effective except when made by a written endorsement to this **policy** issued by **us**.

4.3 Alteration to Risk and Change in Exposure

The **policy** requires **you** to notify **us** within thirty (30) days of any material change in the nature of the **insured's** business, or any act of insolvency or bankruptcy of the **policyholder**, or the appointment of an administrator, liquidator, receiver or manager or any other **change in exposure**. The **policy** requires **you** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of the **insured's** statutory registration. **Loss** arising from conduct which occurs subsequent to the cancellation, suspension or termination of an **insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing **your** profession are excluded from indemnity under the **Policy**.

4.4 Complaints Handling & Dispute Resolution

Any inquiry or complaint relating to this **policy** should be referred to **ProRisk** in the first instance. **We** have a complaints handling and internal dispute resolution process to assist **you**, and information about **our** complaints handling procedures is available upon request. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager
Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Telephone: (02) 8295 9500
Email: complaints_anz@swissre.com

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Telephone: 1800 931 678

Further details will be provided at the appropriate stage of the complaints process.

4.5 Goods & Services Tax

If **you** are entitled to an input tax credit for the premium paid for this **policy**, then **you** should advise **us** of the extent of that entitlement at or before making a claim under the **policy**. The deductible paid by **you** will be net of any input tax credit that is or may be available in connection with your payment of **loss** within the **excess**.

4.6 Interpretation, Governing Law and Jurisdiction, and Assumptions

The construction of the terms and conditions of this **policy**, and interpretation of any issue relating to its construction will be determined by the laws of New South Wales and it is agreed that the courts of Australia will have exclusive jurisdiction to determine any disputes which arise in relation to this **policy**.

4.7 Non-Avoidance

We will not avoid this **policy** in the event of non-disclosure or misrepresentation of information to **us** if **you** be able to establish, to the reasonable satisfaction of **us** that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive.

We may avoid this policy if the non-disclosure or misrepresentation of information to **us** was made fraudulently.

In either case, to the extent that the non-disclosure or misrepresentation has prejudiced **our** right to effectively associate with **you** in the defence and settlement of any **claim**, then we reserve the right to deduct from any **loss** an amount that **we** believe would have been payable had such prejudice not occurred.

4.8 Non-Imputation

The **proposal** for this insurance will be construed as a separate **proposal** by each **insured** under this **policy**. With respect to the declarations and statements contained in the **proposal**, no statement in the **proposal** or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

Only knowledge possessed by and facts known to any past, present or future chairman, director, chief executive officer, chief financial officer partner, proprietor, or person occupying an equivalent position of the **policyholder** will be imputed to the **policyholder**.

For the purposes of determining whether an exclusion applies, no fact pertaining to or knowledge possessed by any **insured** will be imputed to any other **insured** under this **policy**.

4.9 Order of Payment

If the payment of **loss** in respect of a **claim** or **direct financial loss** is due under this **policy** but the amount of such **loss** or **direct financial loss** in the aggregate exceeds the remaining available **limit of liability**, **we** will:

- (a) first pay such **loss** or **direct financial loss** for which coverage is provided to **insured persons**; then
- (b) to the extent of any remaining amount of the **limit of liability** available after payment under subparagraph (a) above, pay such **loss** or **direct financial loss** for which coverage is provided under any other provision of this **policy**.

4.10 Other Insurance

As permitted by the *Insurance Contracts Act 1984 (Cth)*, the **policy** will only cover **loss** or **direct financial loss** to the extent that the amount of such **loss** or **direct financial loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** or **direct financial loss** under the **other insurance** policy or policies listed in the **schedule**.

4.11 Policy Cancellation

The **policyholder** may cancel this **policy** at any time during the **insurance period** by giving **us** written notice. If the **policyholder** cancels this **policy**, **we** will retain the earned proportion of the **premium** calculated pro rata as at the date of cancellation, provided we will always retain a minimum of 25% of the **premium**.

We will only cancel this **policy** as permitted by law and will be entitled to retain the pro rata proportion of the **premium**.

This **policy** may otherwise be cancelled in writing following mutual agreement between the **policyholder** and **us**. A **subsidiary** cannot cancel the **policy**.

This **policy** will automatically terminate in the event that a **discovery period** has been purchased. In this case, **we** will return the unearned portion of the **premium** for this **policy** calculated pro rata as at the date of cancellation or offset it against any **premium** payable for the **discovery period**.

4.12 Retroactive Liability

If specified in the schedule, the **policy** is limited by a **retroactive date**. The **policy** does not cover any **loss** arising from **your** conduct, or any acts, errors or failure to act, event or **direct financial loss** that occurs prior to the **retroactive date**.

4.13 Representations

It is understood and agreed that all statements and declarations made to **us** have been relied upon by **us**, but only to the extent that those statements and declarations are material.

4.14 Subrogation

Should any payment be made under this **policy**, **we** will retain the right to be subrogated to all rights of recovery in respect of such payments. In addition, all reasonable assistance, including the provision of documentation, will be rendered to **us** in the prosecution of such rights by **you**. Any recovery received will be applied first against any **loss** insofar as it exceeds the **limit of liability**, then against any payment made by **us**, and finally against the **excess**.

SECTION 5: GENERAL EXCLUSIONS

The following exclusions will apply to each **policy** purchased by the **policyholder**.

5.1 Asbestos & Toxic Dust

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from or attributable to any actual or alleged liability for property damage, personal injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to

- (a) asbestos, asbestos dusts, asbestos products, asbestos fibres; or
- (b) silica, silica dust, silica products or silica fibres.

5.2 Nuclear

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- (c) the storage, transport assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear compound thereof.

5.3 Pollution

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** whether such discharge, dispersal, release or escape is intentional or accidental; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**.

5.4 Sanctions Limitation

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** or to provide any other benefit to the extent that trade or economic sanctions or other laws or regulations prohibit **us** from providing insurance.

5.5 War, Terrorism and Unlawful Acts

We will not be liable under this **policy** to make any payment for **loss** or **direct financial loss** based upon, arising from, or attributable to:

- (a) **war**;
- (b) **terrorism**; or

- (c) any unlawful, wanton or malicious act committed by a person or persons acting on behalf or in connection with any **unlawful association**;

regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss or direct financial loss**.

SECTION 6: GENERAL DEFINITIONS

6.1 Change in exposure means any of the following events:

- (a) the **policyholder** is acquired by another person or entity;
- (b) the **policyholder** merges or consolidates with another entity;
- (c) any person, entity or affiliated group of persons or entities obtains the right or power to elect, appoint or designate at least 50% of the directors of the **policyholder**;
- (d) any person, entity or affiliated group of persons or entities acquires 50% or more of the issued capital or equity of the **policyholder** specified in the **schedule**.

6.2 Continuous cover date means the **continuous cover date** stated and specified in the **schedule**.

6.3 Discovered or discovery means when any **director or officer, partner or proprietor** (who is not in collusion with an **employee** or third party who has committed or is attempting to commit a **dishonest act**) becomes aware of;

- (a) any facts which would cause a reasonable person to believe that a **direct financial loss** which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **direct financial loss** are not known at that time; or
- (b) a **cyber incident or cyber crime**, which may be covered by this **policy**, even though the exact amount or details are not known at that time.

Such awareness constitutes **discovery** by the **policyholder**.

6.4 Excess means the amounts stated and specified as the excess or excesses in the **schedule**. In the event that any **claim** falls under more than one insuring clause, extension or endorsement, then the applicable **excess** will be applied to each insuring clause, extension or endorsement. However, the total amount payable by the **insured** in respect of each **claim** covered by this **policy** will not exceed the highest applicable **excess**.

6.5 Greenhouse gases means those gases defined by applicable law as a greenhouse gas including but not limited to carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), fluorinated gases and high global warming potential gases.

6.6 Industrial Instrument means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia including the Australian Industrial Relations Commission, Fair Work Australia and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any body anywhere in the world.

6.7 Insurance period means the period of time stated and specified as the insurance period of the **schedule**.

6.8 Investigator means any independent investigator, accountant or other consultant, who does not have a conflict of interest, selected by the **insured** with **our** prior written consent (which will not be unreasonably delayed or withheld), to establish the nature and extent of any **direct financial loss**.

6.9 Limit of liability means the amounts stated as the **limit of liability** in the **schedule**. For the avoidance of doubt, the **limit of liability** includes any sub-limits. Sub-limits of liability are part of and not in addition to the **limit of liability**.

6.10 Other insurance means the other insurance policy or policies stated and specified as other insurance in the **schedule** or any other insurance policy that provides coverage in whole or in part, for the same claim.

- 6.11 Policy** means this **policy** wording, any endorsements to it, the **schedule**, the General Terms & Conditions, the **proposal** and any other documents that **we** advise form part of the **policy**. Where the General Terms & Conditions refer to **ProRisk policies** or **ProRisk policy**, this means the **policy** and any other **policy** issued to **you** by **ProRisk**.
- 6.12 Policyholder** means the organisation, individuals or entities specified and stated as the **policyholder** in the **schedule**.
- 6.13 Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant, infectious or medical waste, toxic or hazardous substance, or contaminant, including but not limited to lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, nuclear waste, oil or oil products, **greenhouse gases** and/or any noise.
- 6.14 Premium** means the amount of money paid for the **policy** as stated in the invoice.
- 6.15 Proposal** means the application form, together with any supplementary material completed by **you** or on **your** behalf, that was given to **us**, and relied on by **us** to underwrite and effect this **policy**. For the avoidance of doubt, the application form will include any online questions submitted to **us** through an internet portal.
- 6.16 ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.
- 6.17 Retroactive date** means the retroactive date stated and specified in the **schedule**.
- 6.18 Schedule** means the schedule and any Endorsements attached to this **policy**.
- 6.19 Subsidiary** means any organisation of which the **policyholder** controls or has controlled:
- a) any legal entity in which the **policyholder** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors;
 - b) any legal entity that ceases to be a subsidiary of the **policyholder** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a acts, errors or failure to act that occurred whilst the entity was a subsidiary of the **policyholder**;
 - c) any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity:
 - (i) has total gross assets which are less than 25% of the total gross assets of the **policyholder**;
or
 - (ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
 - (iii) has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the **USA** or Canada.

The cover provided in this **policy** will only apply in respect of acts, errors, failures to act or conduct occurring after the date of creation or acquisition.

- 6.20 Territorial limits** means the territorial limits and areas of sovereign control of the sovereign nations, states or areas, stated and specified in the **schedule**.
- 6.21 Terrorism** means the use of force or violence and/or the threat of force or violence, by any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organisations(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 6.22 Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 6.23 Unlawful association** means any organisation which is engaged in **terrorism**.

6.24 Us, our and we means **ProRisk** on behalf of **underwriters**.

6.25 USA means the United States of America, its territories, possessions and includes its states or political subdivisions.

6.26 War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.



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Find us on



Howden Real Estate Agents Endorsement

It is agreed that the following additional clauses are added to the **policy**:

The Definition of **professional services** includes the following activities that the **insured** is properly qualified and or licensed to provide, where licensing and/or registration is required by law and declared by **you**:

- (a) real estate agent sales;
- (b) property management;
- (c) real estate auctioneer;
- (d) strata management;
- (e) stock & station agent;
- (f) buyer's agent/advocate;
- (g) facilities management;
- (h) market appraisals, estimates or opinions of the selling price of a property provided that such advice is in writing and accompanied by a disclaimer that such advice does not constitute a valuation; and
- (i) licensed and acting as an authorised representative of a general insurer, so long as all fees and or commissions received by **you** for this activity do not exceed more than 10% of **your** total income as declared for the 12 months prior to the inception of this **policy**.

Professional services does not include business broking.

Real Property Valuations

We will not cover **you** for any **claim** arising directly or indirectly out of or in connection with any property valuations.

Franchisor's Indemnity

- (a) Where the **professional services** are conducted by **you** as a franchisee, **we** will cover **your** franchisor as if they were an **insured** for any **claim** which is first made against **your** franchisor and reported to **us** during the **insurance period** for civil liability to pay compensation arising from **your** conduct of the **professional services**;
- (b) Such cover will only be provided to the extent that **you** are contractually bound to indemnify the franchisor for such a **claim** and if **you** and the franchisor abide by all policy provisions as if the franchisor were an **insured** under the **policy**;
- (c) Nothing in this Endorsement will increase the **limit of liability** or the extent of cover otherwise provided under the **policy** and the **policy** does not cover your franchisor for liability in any way arising from its own acts or omissions;
- (d) **we** retain the right to seek recourse against **your** franchisor in the event of any alleged wrongful information provided to **you** and/or contributory act of negligence on the part of **your** franchisor;
- (e) Nothing in this endorsement will limit or preclude **us** from exercising rights of subrogation against the franchisor to the extent that the franchisor is not indemnified under this Endorsement.

Financial Interest Exclusion

We will not be liable under this **policy** to make any payment on account of any **claim** based upon, arising from or in consequence of any transaction in which **you** have or had a direct or indirect interest, whether financial or otherwise (other than fees), or in which **you** act as a buyer or seller of real property.

Finance Broking, Insurance Broking and Conveyancing Services Exclusion

We will not be liable under this **policy** to make any payment on account of any **claim** based upon, arising from or in consequence of the provision of finance broking, insurance broking, or conveyancing services by **you** or on **your** behalf.

Legal, Accounting and Investment Advice Exclusion

We will not be liable under this **policy** to make any payment on account of any **claim** based upon, arising from or in consequence of the provision by **you** or on **your** behalf of:

- (a) any investment advice or opinion, or any allegation of a failure by **you** to provide investment advice or opinion;
- (b) any legal advice or opinion, or any allegation of a failure by **you** to provide legal advice or opinion;
- (c) any accounting advice or opinion, or any allegation of a failure by **you** to provide accounting advice or opinion; or
- (d) any advice or representations regarding taxation or taxation benefits.

Construction and Property Development

We will not be liable under this **policy** to make any payment on account of any **claim** based upon, arising from or in consequence of **you** performing or allegedly performing the following activities:

- (a) construction; or
- (b) property development.

Separate Excess

It is agreed that a separate **excess** for any **claims** based upon, arising from or in consequence of the following activities:

- (a) \$5,000 or the **excess** shown in the **schedule**, whichever the greater, each **claim** inclusive of costs and expenses will apply in respect of the provision of property management services;
- (b) \$10,000 each and every claimant inclusive of costs and expenses will apply in respect of off the plan sales.

In all other respects, the **policy** remains unaltered.

It is agreed that the following Extensions are added to the **policy**:

Fraud & Dishonesty Extension

We agree to indemnify **you** against any **claim** that would otherwise be excluded by reason of Exclusion Clause 3.8 (Dishonest or Wilful Acts), provided that **we** will not provide indemnity to any person who committed, or who knew about or condoned, any such act, omission or wilful breach specified in Exclusion Clause 3.8 (Dishonest or Wilful Acts).

Pollution Writeback

It is agreed that Exclusion Clause 5.3 (Pollution), will not apply to any **claim** that results directly from the **insured's** provision of the **professional services**.

Workmanship Writeback

It is agreed that Exclusion Clause 3.19 (Workmanship) will not apply to any **claim** that results directly from the **insured's** provision of the **professional services**.

Howden Real Estate PI Employment Practices Liability Extension

It is agreed that the following additional insuring clause is added to the **policy**:

1.5 Employment Practices Liability

We will pay on behalf of an **insured** any **loss** in respect of any **claim** made against an **insured** during the **insurance period** for an **employment practices wrongful act**.

For the purposes of this Endorsement only, Exclusion Clause 3.9 (Employment Liability) does not apply.

The following Exclusion Clauses are added to the **policy**:

We will not be liable under Insuring Clause 1.5 (Employment Practices Liability) of the **policy** for any **loss** arising from any:

- (a) obligation, or actual or alleged breach of an obligation, under any law, regulation or **industrial instrument** providing for paid or unpaid leave of any kind;
- (b) obligation, pursuant to any law, regulation, or **industrial instrument** providing for the payment of workers' compensation entitlements, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, or social security benefits;
- (c) **employment related benefits** or amounts calculated by reference to any **employment related benefits**;
- (d) costs incurred by the **company** to modify any building or property, or to provide any service in order to make such building or property more accessible for accommodating a disabled person;
- (e) costs incurred by the **company** in connection with any educational or corrective measures undertaken under order of a Court of competent jurisdiction, arising from a **wrongful act**;
- (f) specified sums payable by the **company** to an **employee** pursuant to a contract of employment or **industrial instrument**;
- (g) **benefits**;
- (h) actual or alleged violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund;
- (i) **claim** brought and maintained outside of Australia or New Zealand.

The following Definitions are added to the **policy**:

Benefits means any obligation to pay superannuation or pension entitlements, which constitutes money or property or other entitlement.

Industrial instrument means:

- (a) a Contract of employment;
- (b) an award, collective or individual agreement, minimum wage order;
- (c) an enterprise bargaining agreement;
- (d) any other collective agreement;

which regulates the terms and conditions of employment.

Separate Excess

It is agreed that a separate **excess** of \$10,000 will apply for any **claims** based upon, arising from or in consequence of any actual or alleged **employment practices wrongful act**.

In all other respects, the **policy** remains unaltered.

PI0070 – Infectious Diseases

It is agreed that the following clause is added to the **policy**:

We will not be liable for any loss, damage, liability, expense, fines, penalties or any other amount directly or indirectly caused by, in connection with, or in any way involving or arising out of any actual or alleged:

- a) any infectious disease, virus, bacterium or other microorganism (whether asymptomatic or not);
or
- b) Coronavirus (COVID-19) including any mutation or variation thereof; or
- c) any pandemic or epidemic, as declared as such by the World Health Organisation or any governmental authority.

In all other respects, the **policy** remains unaltered.

PI0048 - Reinstatement Endorsement (Two Times)

It is agreed that the following clause is added to the policy:

Automatic Extension 2.7 (Reinstatement of the Limit of Liability) is deleted and replaced with the following:

2.7 Reinstatement of the Limit of Liability

We agree to reinstate the limit of liability up to two times where a claim erodes the limit of liability in whole or in part, up to the maximum aggregate limit of liability.

In all other respects, the **policy** remains unaltered.