



# Professional Indemnity Wording

## **Solution Underwriting Agency Pty Ltd**

Level 5, 289 Flinders Lane  
Melbourne VIC 3000  
T. 03 9654 6100  
[www.solutionunderwriting.com.au](http://www.solutionunderwriting.com.au)  
ABN 68 139 214 323 AFSL 407780

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## Professional Indemnity Wording

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# Important Information

## Receiving Your Policy documents

Receiving Your Policy documents

You may choose to receive Your Policy documents:

- electronically, including but not limited to, email; or
- by post.

If You tell Solution to send Your Policy documents electronically then they will send them to the email address that You have provided. This will continue until You tell Solution otherwise or until Solution advises that this method is no longer suitable. Each electronic communication will be deemed to be received by You 24 hours after it leaves Solution's information system. If You do not tell Solution to send Your Policy documents electronically then the Policy documents will be sent to the mailing address that You have provided.

You are responsible for ensuring that the email and mailing address that Solution has is up to date. Please contact Solution to change Your email or mailing address.

## Updates to Your Policy

From time to time and where permitted by law, We may change parts of the Policy. We will issue You with an Endorsement or other document to update the relevant information except in limited cases. Any updates which are not materially adverse to You from the view of a reasonable person deciding whether to buy this insurance, may be found on Solution's website at [solutionunderwriting.com.au](http://solutionunderwriting.com.au).

You can obtain a paper copy of updated information without charge by calling Solution or Your intermediary.

## Cooling-off period

If You are not satisfied with the cover provided by this Policy, You may cancel it within 14 days of receiving it, and obtain a full refund less any non-refundable government charges and taxes that We have paid. You may notify Us by post or electronically.

If You make a claim for any incident within the 14 day period, You must pay Your annual premium in full.

If Your Policy is for an event that will finish within the 14 day cooling off period, You can only exercise Your right to cancel before the event starts.

## About the insurer

This insurance is underwritten by Chubb Insurance Australia Limited (ABN 23 001 642 020, AFSL 239687) ('Chubb'). Chubb is authorised by the Australian Prudential Regulation Authority ('APRA') to carry on insurance business in Australia. If You require further information about this insurance or wish to confirm a transaction, please contact Solution.

Chubb's contact details are:

Grosvenor Place  
Level 38, 225 George Street  
Sydney NSW 2000  
O +61 2 9335 3200  
F +61 2 9335 3411  
[www.chubb.com/au](http://www.chubb.com/au)

## About the agent

Solution Underwriting Agency Pty Ltd (ABN 68 139 214 323, AFSL 407780) (Solution) arranges policies for and on behalf of Chubb.

Solution acts under a binding authority given to it by the insurer to administer, arrange, enter into, vary, renew and/or cancel policies. In all aspects of arranging this Policy, Solution acts as an agent for the insurer and not for You.

If You have any queries in relation to Your Policy, You can contact Solution in any of the following ways:

**Postal Address:** Level 5, 289 Flinders Lane  
Melbourne, Victoria. Australia 3000  
**Tel:** +61 3 9654 6100  
**Email:** [solution@solutionunderwriting.com.au](mailto:solution@solutionunderwriting.com.au)

## Your duty of disclosure

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

You have this duty until we agree to insure you.

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

What you do not need to tell us:

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### **If you do not tell us something:**

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### **Taxation Information**

The amount of cover available under this Policy excludes Goods and Services Tax (GST).

If the Insured is not registered for GST, in the event of a claim the Insurer will reimburse the Insured the GST component in addition to the amount that the Insurer pays.

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the Premium the Insured must inform the Insurer of the extent of that entitlement at or before the time the Insured makes a claim under this Policy. The Insurer will not indemnify the Insured for any GST liability, fines or penalties that arise from or are attributable to the Insured's failure to notify the Insurer of its entitlement (or correct entitlement) to an input tax credit on the Premium.

If the Insured is liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insured is or may be entitled to claim on payment of the Excess.

If the Insured is unsure about the taxation implications of this Policy, the Insured should seek advice from its accountant or tax professional.

### **Privacy Statement**

Chubb Insurance Australia Limited (Chubb) is committed to protecting your privacy. This document provides you with an overview of how we handle your personal information. Our Privacy Policy can be accessed on our website at [www.chubb.com/au](http://www.chubb.com/au).

#### **Personal Information Handling Practices**

##### *Collection, Use and Disclosure*

We collect your personal information (which may include sensitive information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim in order to help us properly administrate your insurance proposal, policy or claim.

Personal information may be obtained by us directly from you or via a third party such as your insurance intermediary or employer (e.g. in the case of a group insurance policy).

When information is provided to us via a third party we use that information on the basis that you have consented or would reasonably expect us to collect your personal information in this way and we take reasonable steps to ensure that you have been made aware of how we handle your personal information.

The primary purpose for our collection and use of your personal information is to enable us to provide insurance services to you. Sometimes, we may use your personal information for our marketing campaigns, in relation to new products, services or information that may be of interest to you.

We may disclose the information we collect to third parties, including service providers engaged by us to carry out certain business activities on our behalf (such as assessors and call centres in Australia). In some circumstances, in order to provide our services to you, we may need to transfer personal information to other entities within the Chubb Group of companies (such as the regional head offices of Chubb located in Singapore, UK or USA), or third parties with whom we or those other Chubb Group entities have sub-contracted to provide a specific service for us, which may be located outside of Australia (such as in the Philippines or USA). Please note that no personal information is disclosed by us to any overseas entity for marketing purposes.

In all instances where personal information may be disclosed overseas, in addition to any local data privacy laws, we have measures in place to ensure that those parties hold and use that information in accordance with the consent you have provided and in accordance with our obligations to you under the *Privacy Act 1988* (Cth).

##### *Your Choices*

In dealing with us, you agree to us using and disclosing your personal information as set out in this statement and our Privacy Policy. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer. However, should you choose to withdraw your consent it is important for you to understand that this may mean we may not be able to provide you or your organisation with insurance or to respond to any claim.

##### *How to Contact Us*

If you would like a copy of your personal information, or to correct or update it, please contact our customer relations team on 1800 815 675 or email [CustomerService.AUNZ@chubb.com](mailto:CustomerService.AUNZ@chubb.com)

If you have a complaint or would like more information about how we manage your personal information, please review our Privacy Policy for more details or contact the Privacy Officer, Chubb Insurance Australia Limited, GPO Box 4907, Sydney NSW 2001, Tel: +61 2 9335 3200 or email [Privacy.AU@chubb.com](mailto:Privacy.AU@chubb.com).

### General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice (the Code). The objectives of the Code are to further raise standards of service and promote consumer confidence in the general insurance industry. Further information about the Code and your rights under it is available at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) and on request.

### Financial Claims Scheme

We are an insurance company authorised under the Insurance Act 1973 (Cth) (Insurance Act) to carry on general insurance business in Australia by the Australian Prudential Regulation Authority (APRA) and are subject to the prudential requirements of the Insurance Act.

The Insurance Act is designed to ensure that, under all reasonable circumstances, financial promises made by Us are met within a stable, efficient and competitive financial system.

Because of this We are exempted from the requirement to meet the compensation arrangements Australian financial services licensees must have in place to compensate retail clients for loss or damage suffered because of breaches by the licensee or its representatives of Chapter 7 of the Corporations Act 2001 (Cth). We have compensation arrangements in place that are in accordance with the Insurance Act.

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

### Non-renewable policy

This Policy will terminate at the end of the Period of Insurance specified in the Schedule.

If the Insured wants to obtain similar insurance for a subsequent Period of Insurance, the Insured will need to complete a new proposal form before the end of the Period of Insurance specified in the Schedule.

### Waiver, Surrender of Rights, Contribution or Indemnity

The Insurer will not compensate the Insured for any loss or damage that is covered by this Policy where;

- another person or party would be liable to compensate the Insured, or hold the Insured harmless, for part of or all of that loss or damage; and
- the Insured has agreed with that person or party, either before or after the inception of this Policy, that the Insured will not seek recovery from them.

### Notice to the Insured

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

This means that, subject to the Continuous Cover clause, the Policy respond to claims first made against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance. Provided, that the Insured was not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in the Insured's position on notice that a claim may be made against them.

Where the Insured gives notice in writing to the Insurer of any facts that might give rise to a claim against the Insured as soon as they become aware of those facts but before the expiry of the period of insurance, the Insured may have rights under Section 40(3) of the Insurance Contracts Act 1984 (Cth) to be indemnified in respect of any claim subsequently made against the Insured arising from those facts, notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only.

This Policy contains a Retroactive Date, which means it only covers claims made against the Insured and notified to the Insurer in respect of acts, omissions or other conduct which occurred after that date.

### Complaints and Dispute Resolution

We take the concerns of our customers very seriously and have detailed complaint handling and internal dispute resolution procedures that you can access. Please note that if we have resolved your initial complaint to your satisfaction by the end of the 5th business day after we have received it, and you have not requested that we provide you a response in writing, the following complaint handling and internal dispute resolution process does not apply. This exemption to the complaints process does not apply to complaints regarding a declined claim, the value of a claim, or about financial hardship.

## Stage 1 – Complaint Handling Procedure

If you are dissatisfied with any aspect of your relationship with Chubb including our products or services and wish to make a complaint, please contact us at:

The Complaints Officer

Chubb Insurance Australia Limited  
GPO Box 4065  
Sydney NSW 2001  
O 1800 815 675  
E Complaints.AU@chubb.com

The members of our complaint handling team are trained to handle complaints fairly and efficiently.

Please provide us with your claim or policy number (if applicable) and as much information as you can about the reason for your complaint.

We will investigate your complaint and keep you informed of the progress of our investigation. We will respond to your complaint in writing within fifteen (15) business days provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames and, if we cannot agree, you may request that your complaint is taken to Stage 2 and referred to Our internal dispute resolution team. We will otherwise keep you informed about the progress of our response at least every ten (10) business days, unless you agree otherwise.

Please note if your complaint relates to Wholesale Insurance (as defined in the General Insurance Code of Practice), we may elect to refer it straight to Stage 2 for review by our Internal Dispute Resolution team.

## Stage 2 – Internal Dispute Resolution Procedure

If you advise us that you wish to take your complaint to Stage 2, your complaint will be reviewed by members of our internal dispute resolution team, who are independent to our complaint handling team and are committed to reviewing disputes objectively, fairly and efficiently.

You may contact our internal dispute resolution team by phone, fax or post (as below), or email at:

Internal Dispute Resolution Service

Chubb Insurance Australia Limited  
GPO Box 4065  
Sydney NSW 2001  
O +61 2 9335 3200  
F +61 2 9335 3411  
E DisputeResolution.AU@chubb.com

Please provide us with your claim or policy number (if applicable) and as much information as you can about the reason for your dispute.

We will keep you informed of the progress of our review of your dispute at least every ten (10) business days and will respond to your dispute in writing within fifteen (15) business days, provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames. If we cannot agree, you may refer your dispute to the Financial Ombudsman Service Australia (FOS) as detailed under Stage 3 below, subject to its Terms of Reference. If your complaint or dispute falls outside the FOS Terms of Reference, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

## Stage 3 – External Dispute Resolution

If you are dissatisfied with our internal dispute determination, or we are unable to resolve your complaint or dispute to your satisfaction within forty-five (45) days, you may refer your complaint or dispute to FOS, subject to its Terms of Reference.

FOS is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission. We are a member of this scheme and we agree to be bound by its determinations about a dispute. Where a dispute is covered by the FOS Terms of Reference, the General Insurance Division of FOS offers a free and accessible dispute resolution service to consumers.

You may contact FOS at any time at:

Financial Ombudsman Service Australia  
GPO Box 3  
Melbourne VIC 3001  
O 1800 367 287  
F +61 3 9613 6399  
E info@fos.org.au  
www.fos.org.au

If you would like to refer your dispute to FOS you must do so within 2 years of the date of our internal dispute determination. FOS may still consider a dispute lodged after this time if FOS considers that exceptional circumstances apply.

# Definitions

Some of the words in this Policy have specific meanings.

## **Act of Terrorism**

Includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

## **Business**

The professional business conducted by the Insured and described in the Schedule against 'Business'.

## **Claim**

- a) Any demand made by a third party upon the Insured for compensation, however conveyed, including a writ, statement of claim, summons, application or other originating legal or arbitral process; or
- b) A notice of charge, formal investigation order or notice requiring the Insured to attend an inquiry or other proceedings ordered by an Inquiring Body.

## **Defence Costs**

Reasonable legal costs and other expenses incurred by or on behalf of the Insured (with the written consent of the Insurer) or by the Insurer in the investigation, defence and/or settlement of a Claim.

## **Documents**

Deeds, wills, agreements, maps, plans, books, letters, certificates, forms, and documents of any nature, whether written, printed or reproduced by any method. Documents does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

## **Employee**

Any person employed under a contract of service by the Insured and includes any trainee, volunteer and casual, part-time, seasonal, temporary work experience personnel.

## **Excess**

The amount(s) shown in the Schedule against 'Excess', which is inclusive of Defence Costs.

## **Inquiring Body**

A court, tribunal, or legally constituted industry or professional board, coroners court or Royal Commission.

## **Inquiry Costs**

Necessary and reasonable legal costs and expenses incurred by the Insured arising out of any notice requiring the Insured's attendance at an inquiry or hearing before an Inquiring Body.

## **Insolvent**

Becoming a body corporate, entity or person:

- a) that is bankrupt or unable to pay its debts as and when they fall due; or
- b) in respect of which an application for bankruptcy or winding up has been made; or
- c) in respect of which a Liquidator, Provisional Liquidator, Receiver, Receiver and Manager, or Official Manager has been appointed (whether or not by a Court); or
- d) in respect of which an administrator has been appointed or that is under administration; or
- e) that has executed a Deed of Company Arrangement that has not yet terminated; or
- f) that has entered into a compromise or arrangement with another person.

## **Insured, You or Your**

- a) any party named in the Schedule as an Insured and any Subsidiary; and
- b) any person who is a director, principal, partner, or Employee during the Period of Insurance when acting on behalf of the Business; and
- c) any person who ceased to be a director, principal, partner, or Employee of the Insured prior to the Period of Insurance whilst they were acting on behalf of the Business.

## **Insurer, We, Us, or Our**

Chubb Insurance Australia Limited (ABN 23 001 642 020, AFSL 239687) ('Chubb').

**Joint Venture**

An unincorporated enterprise that the Insured carries on jointly with some other party or parties.

**Limit of Indemnity**

The amount shown in the Schedule against 'Limit of Indemnity' as the total liability of the Insurer under the Policy for all Claims which are made and notified in the Period of Insurance.

**Period of Insurance**

The period shown in the Schedule against 'Period of Insurance' unless terminated earlier.

**Policy**

This Policy document, its Schedule, the endorsements, and any other documents the Insurer tells You form part of the Policy if any, noted in the Schedule or granted by the Insurer after inception of the Policy, and the information given to the Insurer on behalf of the Insured in the Proposal.

**Pollutant**

Any:

- a) solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b) waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c) other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

**Proposal**

The written proposal form together with all supplementary information and material provided by or on behalf of the Insured.

**Public Relations Expenses**

The reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an adverse publicity event.

**Retroactive Date**

The date shown in the Schedule against 'Retroactive Date'.

**Schedule**

The schedule attaching to and forming part of this Policy.

**Senior Counsel**

A barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia or the Dominion of New Zealand.

**Subsidiary**

Means a subsidiary of the named Insured as defined in the Corporations Act 2001 (Cth).

# 1. Preamble

Subject to payment of the premium set out in the Schedule, the Insurer agrees with the Insured to provide insurance on the terms of the Policy.

Some of the words in this Policy have specific meanings, which are set out in the Definitions Section.

In granting insurance to the Insured, the Insurer has relied upon the Proposal, which will be considered incorporated herein and be the basis of this Policy.

# 2. Insuring Clauses

## 2.1 Cover

Subject to the terms, conditions, limits and exclusions of this Policy, the Insurer will indemnify the Insured for civil liability for compensation and claimants costs and expenses arising from any Claim, which is:

- a) first made against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance; and
- b) for breach of professional duty in the conduct of the Business.

The total liability of the Insurer under this Section of the Policy in respect of civil liability for any one Claim and in the aggregate for all Claims (including any amounts paid or which have been agreed will be paid in accordance with Claims Condition 7.4 'Discharge of Liability') shall not exceed the Limit of Indemnity.

## 2.2 Defence Costs

The Insurer will pay Defence Costs in the investigation, defence and/or settlement of any

Claim for which the Insured is entitled to be indemnified under Insuring Clause 2.1 'Cover'. Defence Costs are part of the Limit of Indemnity, however the Insurer will indemnify the Insured for Defence Costs in addition to the Limit of Indemnity for up to:

- a) \$5,000,000; or
  - b) the Limit of Indemnity;
- whichever is the lesser.

Provided that if a judgment or an amount required to settle a Claim exceeds the Limit of Indemnity, the Insurer's liability to pay Defence Costs is limited to the proportion the Limit of Indemnity bears to the amount required to be paid to dispose of the Claim and in all cases will not exceed the amount of additional Defence Costs described above.

## 2.3 Advancement of Defence Costs

The Insurer agrees to pay for Defence Costs in respect of any Claim covered by this Policy as they are incurred prior to the resolution of the Claim.

# 3. Automatic Extensions

## Preamble

The Insurer agrees to extend the insuring clause to cover these Automatic Extensions, for no additional premium, provided that:

- a) the indemnity provided is subject to the Schedule, Exclusions, Conditions, Excess and all other terms of this Policy and;
- b) the inclusion of any Policy Automatic Extension shall not increase the Limit of Indemnity.

## 3.1 Consumer Protection

The Insurer agrees to provide cover, for any legal liability of the Insured which results from a breach of the Competition and Consumer Act 2010 (Cth) and its provisions in Commonwealth of Australia and Australian State or Territory fair trading legislation. Provided that:

- a) the breach occurred in the conduct of the Business; and
- b) there is no cover for criminal liability.

## 3.2 Libel and Slander

The Insurer agrees to provide cover, for any legal liability of the Insured for unintentional libel, unintentional slander or unintentional defamation which occurs in the conduct of the Business.

## 3.3 Contractual Liability

The Insurer agrees to provide cover, for any legal liability of the Insured for contractual liability. Provided that the Insurer will not be liable if the Insured has assumed liability under a warranty, guarantee or agreement unless such liability would have attached to the Insured in the absence of such agreement.

## 3.4 Dishonesty

The Insurer agrees that, subject to this Automatic Extension and the remaining terms of the Policy, Exclusion 5.4 'Dishonesty' will not apply to any Claim arising from or attributable to any dishonest, fraudulent, criminal or malicious act, error or

omission of any Employee in the conduct of the Business.

Provided that no indemnity is available by virtue of this Automatic Extension:

- a) where the Insured has knowingly engaged in or condoned such conduct; or
- b) for any person committing or condoning the act, error or omission; or
- c) for any loss sustained or liability incurred as a result of any act, error or omission occurring after the date on which the Insured first discovers, or has reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any such person.

### 3.5 Joint Venture

The Insurer agrees to provide cover for any legal liability of the Insured which is based on or attributable to the Insured's provision of the Business as part of a Joint Venture where:

- a) the fees or income derived from participation in such Joint Venture have been included in the Proposal for the purposes of calculating the premium for this Policy; and
- b) the Joint Venture is not otherwise insured by any other more specific insurance in respect of the Joint Venture,

There is no cover under this Policy for the Insured's Joint Venture partner(s) and the Insurer will only indemnify the Insured for their portion of the Joint Venture.

### 3.6 Loss of Documents

If during the Period of Insurance the Insured first discovers that any Documents the property of or entrusted to the Insured have been destroyed, damaged, lost or mislaid the Insurer agrees to provide cover for costs and expenses of whatsoever nature incurred by the Insured in replacing or restoring such Documents.

Provided always that:

- i. such costs and expenses are supported by accounts approved by a competent person nominated by the Insurer; and
- ii. such loss or damage is sustained during the Period of Insurance while the Documents are either in custody of the Insured or any person who the Insured has entrusted them resulting from the conduct of the Business; and
- iii. the Documents were not lost due to wear, tear, vermin, mould or mildew or any other gradually operating cause; and

- iv. the maximum aggregate amount payable by the Insurer under this Automatic Extension in any Period of Insurance is \$500,000 inclusive of Defence Costs which is part of and not in addition to the Limit of Indemnity.

### 3.7 Consultants, Sub Contractors and Agents

The Insurer agrees to provide cover to the Insured for any legal liability arising from, attributable to or in any way connected with the provision of the Business by any consultants, sub contractors or agents of the Insured.

No indemnity is provided for any Claim made against such consultants, sub contractors or agents.

### 3.8 Intellectual Property

The Insurer agrees to provide cover, for infringement of rights of intellectual property, provided that the act, error or omission by the Insured is unintentional and is committed in the course of carrying on the Business.

### 3.9 Inquiry Costs

The Insurer will indemnify the Insured for Inquiry Costs.

Provided that:

- a) the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured and notified to the Insurer during the Period of Insurance; and
- b) such attendance arises directly from conduct allegedly committed by the Insured in carrying on the Business; and
- c) such indemnity is subject to the written consent of the Insurer prior to the incurring of the Inquiry Costs; and
- d) regular or overtime wages, salaries or fees of the Insured are excluded from this indemnity; and
- e) the total liability of the Insurer under this Automatic Extension shall not exceed \$100,000 during the Period of Insurance.

### 3.10 Estates

The Insurer agrees to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent Insured.

### 3.11 Former Principals

The Insurer agrees to indemnify former principals, partners, directors and Employee(s) of the Insured in respect of civil liability provided always that the definition of the Insured includes those persons and only in respect of work performed while a principal, partner, director or Employee of the Insured.

### 3.12 Automatic Reinstatement

In the event of exhaustion of the Limit of Indemnity set out in the Schedule by reason of costs or indemnity incurred during the Period of Insurance the Insurer agrees to reinstate the Limit of Indemnity until the expiry of the same Period of Insurance.

Provided that:

- a) the Limit of Indemnity having been so reinstated, the reinstatement will only apply in respect of Claims which do not arise out of and do not have any connection with the originating cause of any Claims incurred or Insurer has agreed to incur made prior to the effective date of the said reinstatement; and
- b) the aggregate of the amounts so reinstated shall be limited in the Period of Insurance to an amount equal to the Limit of Indemnity applicable at the inception of the Period of Insurance; and
- c) the Limit of Indemnity so reinstated shall represent the total liability of the Insurer for all Claims made during the time from the effective date of the reinstatement until the expiry of the Period of Insurance; and
- d) there will be no reinstatement of sub-limits, except if the original indemnity limit is reinstated.

No cover will be provided under this extension for any Claim arising from, attributable to or in any way connected with proceedings brought in the United States of America or Canada or the enforcement of any judgment or award obtained pursuant to the laws of the United States of America or Canada

### 3.13 Continuous Cover

Where the Insured:

- a) first became aware of facts or circumstances that might give rise to a Claim in the period 12 months prior to the Period of Insurance; and
- b) had not notified the Insurer of such facts or circumstances prior to the Period of Insurance, then Exclusions 5.1 'Known Circumstances' and 5.2 'Known Claims' will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that:
  - i. there is an absence of fraudulent non-compliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances; and
  - ii. the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under

a professional indemnity policy issued by the Insurer (or previous insurer to underwrite this policy) and was insured by the Insurer (or previous insurer to underwrite this policy) at the time when the Insured first became aware of such facts or circumstances; and

- iii. the Insurer may reduce its liability under the Policy to the extent of any prejudice the Insurer may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance.

### 3.14 Run off cover

If during the Period of Insurance the Insured is subject to a merger, takeover, sale or winding-up, the Insurer agrees to continue the cover under this Policy in respect of civil liability insured under Insuring Clauses through to the end of the Period of Insurance.

Provided that this Automatic Extension only applies in relation to civil liability for a breach of professional duty in the conduct of the Business by reason of any act, error or omission occurring prior to the effective date of the merger, takeover, sale or winding-up.

Upon application by the Insured and subject to written agreement by the Insurer prior to expiry of the Period of Insurance, and subject as well to payment of any additional premium required by the Insurer (to be paid in full immediately upon expiry of this Period of Insurance) cover provided in accordance with this Automatic Extension may be extended for an additional Period of Insurance of up to 84 months as may be determined by agreement between the Insured and the Insurer.

### 3.15. Compensation for Court Attendance

The Insurer will pay the Insured compensation if any principal or Employee is required to attend court as a witness in connection with a Claim covered under this Policy, provided that the lawyers acting on behalf of the Insured requested the principal or Employee to attend. The Insurer will pay the rate equivalent to the principal's daily take home salary up to \$500 per person each day or Employee daily take home salary up to \$250 per person each day subject to a maximum of \$10,000 for all persons any one Claim.

### 3.16 Former Subsidiary

The Insurer agrees to provide cover to the former Subsidiary of the Insured resulting from the conduct of the Business.

Provided that:

- a) the former Subsidiary is specified in the Proposal; and

- b) such indemnity only applies arising out of any act, error or omission occurring prior to the date such Subsidiary ceased to be a Subsidiary of the Insured.

### 3.17 Thirty Day Reporting Period

The Insurer agrees that the Insured may continue to notify the Insurer of Claims up to thirty days after the expiry of the Period of Insurance in relation to Claims first made against the Insured during the Period of Insurance which result from any act, error or omission committed or alleged to have been committed prior to expiry of the Period of Insurance. Any notification under this extension will be deemed to have been first notified to the Insurer during the Period of Insurance.

### 3.18 Extended Reporting Period

In the event that at the end of the Period of Insurance this Policy is neither renewed nor replaced with a policy that covers substantially the same risk, the Insured is entitled to purchase an extended reporting period of 365 days.

Provided that:

- a) if the Insured becomes Insolvent during the Period of Insurance they are not entitled to purchase an extended reporting period under this extension; and
- b) the Insured is required to pay the additional premium the Insurer determines to be applicable; and
- c) the entitlement to purchase this extension lapses on the expiry of the Period of Insurance.

### 3.19 Public Relations Expenses

The Insurer will indemnify the Insured for Public Relations Expenses incurred with the written consent of the Insurer in the event of an adverse publicity event.

Provided that:

- a) that adverse publicity event occurs in the Period of Insurance and is notified to the Insurer in the Period of Insurance; and
- b) the adverse publicity event is one that has the potential to seriously impact the reputation of the named Insured; and
- c) the Insured is liable for the first \$1,000 of Public Relations Expenses incurred for any one event; and
- d) the total liability of the Insurer under this extension will not exceed \$50,000 in the aggregate during the Period of Insurance.

### 3.20 Newly Created or Acquired Subsidiary

If during the Period of Insurance the Insured acquires or creates a new Subsidiary, the Insurer will provide cover to the new Subsidiary.

Provided that, this cover only applies:

- a) from the date of acquisition or creation and ending 60 days after; and
- b) to acts, errors or omissions occurring after the date the Insured created or acquired the Subsidiary; and
- c) to Subsidiaries which are domiciled in Australia and New Zealand; and
- d) to Subsidiaries that conduct the same Business as the Insured.

### 3.21 Indemnity to Uninsured Contractors

The Insurer will provide cover to any person who is a past and/or present contractor of the Insured resulting from the conduct of the Business.

Provided that:

- a) at the time of any act, error or omission such contractor was not an Employee of the Insured and they:
  - i. had entered into a contract with the Business of the Insured where they earned at least 90% of their income (for the 6 months prior) from the Insured; and
  - ii. were under the direct control and supervision of the Insured;
- b) the Insured declared the income to the Insurer generated by the contractor in the Proposal; and
- c) such contractor shall be subject to all the terms of this Policy as if they were an Insured.

### 3.22 Compensatory Penalties

Notwithstanding Exclusion 5.9 Multiple Damages and Fines and Penalties the Insurer will cover the Insured for compensatory civil damages awarded against the Insured, which results from a proceeding commenced and notified to the Insurer in the Period of Insurance resulting from the conduct of the Business.

Provided that, the Insurer will not indemnify the Insured for compensatory civil damages which:

- a) the Insurer is legally prohibited by law from indemnifying; or
- b) which result from a wilful, intentional or deliberate act, error or omission.

The total liability of the Insurer under this extension will not exceed \$250,000 in the aggregate during the Period of Insurance.

# 4. Optional Extensions

The Insurer agrees to provide cover to the Insured for this Optional Extension if it is shown on the Schedule as being included.

## 4.1 Principal's Previous Business

The Insurer agrees to indemnify any past or present principal of the Insured arising from, attributable or in any way connected with the conduct of services that are the same as the services provided by the Business whilst the principal was a sole practitioner, partner of a firm or company prior to becoming a principal of the Insured.

# 5. Exclusions

This Policy does not provide cover for any Claim:

## 5.1 Known Circumstances

arising from, attributable to or in any way connected with any facts, circumstances or occurrences:

- a) noted on the Proposal for the current Period of Insurance or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b) of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew (or ought reasonably to have realised) may give rise to a Claim.

## 5.2 Known Claims

arising from, attributable to or in any way connected with any Claim first made against the Insured prior to the start of the Period of Insurance.

## 5.3 Retroactive Date

arising from, attributable to or in any way connected with any act, error or omission occurring prior to the Retroactive Date.

## 5.4 Dishonesty

arising from, attributable to or in any way connected with any dishonest, fraudulent, criminal or malicious conduct of the Insured or any Employee. Such conduct also includes, but is not limited to, acts or omissions which are:

- a) committed with reckless disregard for the consequences thereof; or
- b) a wilful breach of statute, contract or duty.

This exclusion will only apply where it is established by an admission of such Insured or Employee or by a judgment, award, finding or other adjudication of a court, tribunal, commission, or arbitrator that such conduct did in fact occur.

## 5.5 Related Parties

made, brought or maintained by or on behalf of:

- a) any other person or entity who is an Insured; or
- b) any person or entity who or which is related to or associated with an Insured, unless such person or entity is acting without any prior direct or indirect solicitation, co-operation or assistance from an Insured.

## 5.6 Insolvency

first made or intimated subsequent to the date upon which the Insured becomes Insolvent.

This Exclusion shall not apply where the Insured establishes, to the satisfaction of the Insurer, that the Claim would have arisen notwithstanding that the Insured was Insolvent.

## 5.7 Consensual Claims

made, brought or maintained by or on behalf of any person or entity with the solicitation, co-operation or assistance of any Insured.

## 5.8 Rights of Contribution or Indemnity

for or in connection with any liability, loss or damage in respect of which the Insured has at any time foregone, waived, excluded or limited a right of recovery.

## 5.9 Multiple Damages and Fines and Penalties

for

- a) exemplary, aggravated, punitive or liquidated damages; or
- b) fines or penalties.

## 5.10 Information Technology Hazards

arising from, attributable to or in any way connected with:

- a) loss, corruption or destruction of data, coding programme or software; or
- b) unavailability of data and malfunction of hardware, software and embedded chips.

## 5.11 Geographical Limits

arising from, attributable to or in any way connected with any act, error or omission occurring in the United States of America (including its territories and protectorates).

## 5.12 Jurisdiction

brought in a court of law, tribunal or other body entitled to enforce orders against the Insured in the United States of America or Canada (including their territories and protectorates) or from the enforcement of any judgment, order or award under the laws of the United States of America or Canada (including their territories and protectorates).

## 5.13 Asbestos

arising from, attributable to or in any way connected with resulting as a consequence of, or related to asbestos, asbestos fibres or any derivatives of asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

## 5.14 War, Terrorism and Nuclear Material

- a) caused by or arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution, confiscation, nationalisation, requisition or looting, sacking or pillage,

destruction of or damage to property by or under the order of any government or local authority; or

- b) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
- c) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism; or
- d) caused by or arising directly or indirectly out of or in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self sustaining process of nuclear fission.

## 5.15 Trading Debt

arising from, attributable to or in any way connected with any trading debt incurred by the Insured or any guarantee given by the Insured for any debt.

## 5.16 Occupier's Liability

arising from, attributable to or in any way connected with the ownership, occupation, control or management of real property by an Insured.

## 5.18 Pollution

arising from, attributable to or in any way connected with the actual, alleged or threatened dispersal, release or escape of Pollutants into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such Pollutants, or seepage, pollution or contamination howsoever occurring.

## 5.19 Prohibited by Law

to the extent that the provision of such indemnity or benefit, or the payment of such Defence Costs would expose the Insurer or the Insurer's parent to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanction, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

## 5.20 Employer's Liability

arising from, attributable to or in any way connected with:

- (a) the death, bodily injury, disease or illness of any Insured arising out of or in the course of or in respect of their employment with the Insured; or
- (b) a breach of any obligation owed by the Insured as an employer, to an Employee.

## 5.21 Director and Officers' Liability

arising from, attributable to or in any way connected with the Insured's functions and duties as a director and/or officer of the Insured or any legal entity, corporation or other incorporated body.

## 5.22 Professional Fees

arising from, attributable to or in any way connected with a request to refund professional fees of the Insured.

# 6. General Conditions

## 6.1 Limit of Indemnity

The total liability of the Insurer under this Policy in respect of any one Claim, including Defence Costs, and in the aggregate for all Claims, including Defence Costs, (including any amounts paid or which have been agreed will be paid in accordance with Claims Condition 7.4 'Discharge of Liability') will not exceed the Limit of Indemnity.

## 6.2 Excess

The Insurer's liability under this Policy shall apply only to that part of the amount, up to the available Limit of Indemnity, required to dispose of a Claim, which exceeds the Excess. Such Excess will be borne by the Insured and shall remain uninsured. The Excess is inclusive of Defence Costs.

The Excess applies to each Claim covered by this Policy. However, where more than one Claim arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one Excess is payable under the Policy.

In the event a payment required to dispose of a Claim does not exceed the Excess, that part of the Excess not required to dispose of such Claim shall be applied to the Defence Costs otherwise paid or payable by the Insurer and such amount shall be paid by the Insured to the Insurer or at its direction on request.

Where the Insurer makes a payment in respect of a Claim, including for Defence Costs, which includes payment of part or all of the Excess, the Insured shall within 30 days of being notified by the Insurer

reimburse the Insurer for the amount of the Excess paid by the Insurer on behalf of the Insured.

## 6.3 Material Changes to the Risk

The Insured will immediately advise the Insurer of any material alteration to the Insured's professional Business including but not limited to:

- a) any change in the nature of the services comprising the Business; or
- b) any merger with or acquisition by the Insured of, or acquisition of the Insured by, any other business; or
- c) an Insured going into bankruptcy, administration, receivership or liquidation; or
- d) an Insured entering into a debt agreement or arrangement with creditors; or
- e) the cancellation or suspension of, or the imposing of special conditions upon, the Insured's statutory professional registration or licensing or registration with a professional association.

## 6.4 Cancellation

This Policy may be cancelled by the Insured giving written notice to the Insurer at any time. This Policy may be cancelled by the Insurer in accordance with the *Insurance Contracts Act 1984* (Cth).

Upon cancellation by the Insured a refund of premium will be allowed, pro-rata less 15%, for the unexpired portion of the Period of Insurance and less any taxes and duties We cannot recover.

There will be no pro-rata refund if there has been any notification of a circumstance or Claim.

## 6.5 Governing Law

This Policy is to be governed by the laws of Australia and the State or Territory where the Policy was issued. The relevant courts of the place where the Policy was issued shall have jurisdiction in any dispute concerning or under this Policy.

## 6.6 Validity

This Policy is not valid unless its Schedule is attached and has been signed by a duly authorised officer or agent of the Insurer.

## 6.7 GST Basis of Settlement

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the premium, the Insured must inform the Insurer of the extent of that entitlement at or before the time the Insured makes a claim under this Policy. The Insurer will not indemnify the Insured for any GST liability, fines or penalties that arise from or is attributable to the Insured's failure to notify the Insurer of the Insured's entitlement (or correct entitlement) to an input tax credit on the premium.

If the Insured is liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insured is or may be entitled to claim on payment of the Excess.

## 6.8 Interpretation

Paragraph headings are included for convenience only and do not form part of this Policy for the purposes of interpretation of this Policy. Words and expressions in the singular include the plural and vice versa.

## 6.9 Insured's Failure To Pay Insurance Premium

It is a condition of this contract of insurance that the Insured pay the insurance premium and the Insurer may take steps to cancel the contract of insurance for non-payment of the insurance premium.

## 6.10 Severability

The Insurer agrees that any conduct on the part of any party who is an Insured, whereby such party breached the duty of disclosure or made a misrepresentation to the Insurer before this contract was entered into, will not prejudice the right to indemnity of any other party who is an Insured to indemnity under the Policy. Provided that such other Insured:

- a) is innocent of and has no prior knowledge of any such conduct; and
- b) will immediately upon becoming aware of any such conduct advise the Insurer in writing of all known facts in relation to such conduct.

Nothing in this Automatic Extension relieves any Insured from the duty of disclosure owed to the Insurer.

## 6.11 Subrogation

If the Insurer makes a payment under this Policy to the Insured or on the Insured's behalf then, subject to the *Insurance Contracts Act 1984* as amended from time to time, the Insurer will be subrogated to all of the Insured's rights of recovery against all persons and the Insured must, at the Insurer's request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist the Insurer in the exercise of its rights.

# 7. Claims Conditions

## 7.1 Claims Reporting

The Insured must notify Us as soon as possible of all such circumstances and provide all reasonable information and assistance that the Insurer may require, including details of any other insurance or indemnity to which You may be entitled in relation to the circumstance giving rise to the Claim.

## 7.2 Claims Co-operation and Mitigation

The Insured will not make any offer or payment or admit liability for or settle any Claim or incur any costs or expenses or otherwise assume any liability in connection therewith without the written consent of the Insurer. The Insured shall not forego, waive, exclude or limit any rights of recovery. The Insured shall otherwise, at its own cost, diligently do all things reasonably practicable to avoid or minimise any liability hereunder.

The Insurer shall not be liable for any settlement or other liability assumed, or costs and expenses incurred by the Insured without the written consent of the Insurer.

The Insured shall, at its own cost, immediately provide to the Insurer such assistance and information as the Insurer may reasonably require to enable the Insurer to determine whether or not the Insured is entitled to an indemnity under this Policy, and to enable the Insurer to investigate and defend any Claim.

## 7.3 Conduct of Defence

The Insurer shall be entitled at any time to take over and conduct in the name of the Insured the investigation, defence and/or settlement of any Claim. Any amounts incurred by the Insurer or the Insured with the written consent of the Insurer in the conduct of the defence on behalf of the Insured shall be deemed to be part of Defence Costs.

If the conduct of the defence of a Claim is assumed by the Insurer, or the Insured is permitted by the Insurer to expend costs and expenses in the defence of the Claim, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not:

- a) indicate an Insured is entitled to indemnity under the Policy;
- b) waive or prejudice the Insurer's rights under the Policy.

## 7.4 Discharge of Liability

If in the opinion of the Insurer the amount required to dispose of any Claim may exceed the available Limit of Indemnity, the Insurer shall be entitled, at its discretion, to discharge its liability by paying (or agreeing to pay upon settlement of the Claim) the available Limit of Indemnity to the Insured or on the Insured's behalf and paying the Defence Costs incurred up to the time of election to discharge its liability. If at the time of making such an election the Insurer is conducting the defence of the Claim, the Insurer shall relinquish conduct. The Insurer shall have no further liability for Defence Costs after written notice of such election has been given to the Insured.

If the Insured disagrees with a Claim settlement recommended by the Insurer, the Insured may elect to contest such Claim. However, the liability of the Insurer in respect of the Claim will not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred up to the date of such election, less the Excess.

## 7.5 Disputes as to Defence and Settlement of Claims

If a dispute arises between the Insurer and Insured as to whether or not to contest any legal proceedings, neither the Insurer nor the Insured shall be required to contest such legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insurer and the Insured or, failing agreement, the President of the Law Society or equivalent body in the State where the Claim is being heard or defended) shall advise that such proceedings should be contested. Senior Counsel shall advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the Insured and the likely Defence Costs that will be incurred in defending the Claim. The costs of Senior Counsel so advising will be Defence Costs.

## 7.6 Representation Issues

The lawyers instructed by the Insurer to act on the Insured's behalf can disclose to the Insurer any information they receive in that capacity, whenever and from wherever it is obtained. The Insured agrees to waive any legal professional or client privilege to the extent such privilege may have prevented disclosure to or use of that information by the Insurer. By claiming under this Policy the Insured authorises such lawyers to disclose this information to the Insurer and waives any claims for legal professional or client privilege as against the Insurer.

If there is a dispute between the Insured and the Insurer, the lawyers appointed by the Insurer to conduct the defence of the Claim will also continue to advise the Insurer on all issues, including but not limited to the right of the Insured to indemnity under the Policy or any related issue. It is agreed that this will not prevent those lawyers from acting on the defence of the Claim on the instructions of the Insurer.

If any actual or potential conflict arises between the respective interests of the Insured and the Insurer, the lawyers appointed by the Insurer to investigate and defend the Claim may cease acting on behalf of the Insured and continue to advise the Insurer in any dispute with respect to the entitlement of the Insured to indemnity under the Policy.

The Insured agrees that all communications between the Insurer and the lawyers appointed by the Insurer to investigate, defend or settle a Claim are privileged as between the Insurer and the lawyers and that the Insured is not entitled to demand, access or obtain any such communications or information contained therein.

## **7.7 Other Insurance**

If for any Claim or Defence Costs there is any other insurance or indemnity which may afford indemnity to the Insured or a right of contribution by the Insurer, the Insured shall notify the Insurer and provide full details of such other insurance or indemnity and such further information as the Insurer may reasonably require.



**Product issued by  
Chubb Insurance Australia Limited**

Grosvenor Place  
Level 38, 225 George Street  
Sydney NSW 2000  
O +61 2 9335 3200  
F +61 2 9335 3411  
[www.chubb.com/au](http://www.chubb.com/au)  
ABN 23 001 642 020  
AFSL 239687

**Distributed by  
Solution Underwriting Agency Pty Ltd**

Level 5, 289 Flinders Lane  
Melbourne VIC 3000  
Australia  
T: 03 9654 6100  
[www.solutionunderwriting.com.au](http://www.solutionunderwriting.com.au)  
ABN 68 139 214 323  
AFSL 407780

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