



Solution Underwriting Commercial Legal Expenses Policy

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Solution Underwriting Commercial Legal Protection Policy

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Commercial Legal Protection Policy

Please read this **Policy** carefully and ensure that **You** understand its terms including, but not limited to: the cover being provided; the conditions relating to the cover; and the exclusions to cover.

Important information

The information set out in this Section is not intended to amend the terms and conditions of this **Policy** in any way. The intent of this Section is to highlight the important benefits **You** are entitled to:

1. Legal Advice Service

You can contact the Legal Advice Service legal.advice@sparke.com.au for legal advice on any problem directly related to **Your Core Business Activities**. The advice available is limited to the law and practice in Australia and is only available to **You** if **Your Core Business Activities** are conducted within the Commonwealth of Australia.

2. Making a Claim

In order to make a **Claim** please contact the **Claims Manager** as follows:

Proclaim Management Solutions Pty Ltd
271 Collins Street
Melbourne, VIC 3000
Email: legalexperiences@proclaim.com.au

3. Complaints

3.1 In the first instance, any complaint relating to this **Policy** should be directed to:

3.1 Compliance Department
Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: compliance@solutionunderwriting.com.au

3.2 If **Your** complaint cannot be resolved or **You** are not satisfied by the manner in which the complaint has been processed, **You** should contact:

Lloyd's Australia Limited
Level 9, 1 O'Connell St
Sydney NSW 2000
Australia
Email: idraustralia@lloyds.com
Tel: + 61 (02) 8298 0783
Fax: + 61 (02) 8298 0788

3.3 If **Your** complaint is not resolved by Lloyd's in a manner satisfactory to **You** or Lloyd's does not resolve **Your** complaint within fifteen (15) business days of receiving it OR it has been more than forty-five (45) calendar days since the complaint was made), **You** may refer the matter to the Australia Financial Complaints Authority ("**AFCA**"). AFCA can be contacted by post at GPO Box 3, Melbourne Vic 3001, phone 1800 931 678, email info@afca.org.au or via their website www.afca.org.au

3.4 AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between **You** and **Us**. **Your** dispute must be referred to AFCA within two (2) years of the date of Lloyd's final decision. Determinations made by AFCA are binding upon Lloyd's.

4. Service of Suit

4.1 We agree that:

4.1.1 In the event of a dispute arising under this **Policy**, **We**, at the request of **You**, will submit to the jurisdiction of any competent **Court** in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such **Court**.

4.1.2 Any summons notice or process to be served upon **Us** may be served upon:

Lloyd's General Representative in Australia
Lloyd's Australia Ltd Level 9, 1 O'Connell Street
Sydney, NSW 2000, Australia

who has authority to accept service and enter an appearance on **Our** behalf, and who is directed at the request of the insured (or reinsured) to give a written undertaking to **You** that they will enter an appearance on **Our** behalf.

5. Privacy Statement

Solution Underwriting is committed to protecting individuals' personal information. A copy of their privacy policy can be made available on request. Please contact:

Compliance Department
Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: compliance@solutionunderwriting.com.au

6. National Privacy Principles ("NPPs")

Solution Underwriting Pty Ltd (ABN 68 139 214 323) abides by the National Privacy Principles established under the *Privacy Amendment (Private Sector) Act 2000*. This sets out the standards to be met in the collection, use, disclosure and handling of personal information. Solution Underwriting is subject to the Australian Privacy Principles as set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), which applies from 12 March 2014.

7. General Insurance Code of Practice

We and Solution Underwriting proudly support the General Insurance Code of Practice. 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 www.codeofpractice.com.au

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world – building resilience for businesses and local communities and strengthening economic growth around the world.

Commercial Legal Protection Policy Wording

1. DEFINITIONS

For the purposes of this **Policy**, the following terms shall have the respective meanings set out below when they appear in bold in this **Policy** regardless of whether they appear before or after the place in this **Policy** where they are defined. Grammatical variations of such terms shall have corresponding meanings.

- 1.1 **Aggregate Claims Limit** means the amount specified in the Schedule to this **Policy** being the maximum amount **We** will pay to **You** for any and all **Claims**.
- 1.2 **Any One Claim** means all **Claims** arising from the same originating cause, event or circumstances which will be treated as a single **Claim** for the purposes of this **Policy**.
- 1.3 **Applicable Law** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the "**Law**") relating or applicable to such Person, property, transaction, event or matter and includes any interpretation, bulletins, circular letters, guidelines, instruments, provisions, and policy statements published or issued in respect of any such Law by any Person having jurisdiction over it, or charged with its administration or interpretation and also shall include any economic and trade sanctions, anti-bribery laws and personal data laws and regulations.
- 1.4 **Appointed Professional** means any legal advisor, financial advisor or other professional advisor or third-party Person appointed by the **Claims Manager** to act on **Your** behalf.
- 1.5 **ATO** means the Australian Taxation Office or appropriate government authority or state authority or agency authorised to conduct the relevant activity.
- 1.6 **Business Premises** means the premises from which **You** conduct and/or undertake **Your Core Business Activities**.
- 1.7 **Claim** means a claim under this **Policy** related to a **Dispute** which is made and communicated in accordance with clause 4.3 during the **Policy Period**.
- 1.8 **Claim Amount** means the amount of indemnity being claimed by **You** from **Us** for a **Claim**.
- 1.9 **Claims Manager** means the **Person** named as '**Claims Manager**' in the Schedule to this **Policy**.
- 1.10 **Communicable Disease** means any infectious, communicable or contagious disease; and/or any other disease, or any mutation or variation thereof, which:
 - 1.10.1 can be caused by any substance or agent including, but not limited to, a virus, bacterium, parasite, microorganism or any other pathogen (whether living or not); and
 - 1.10.2 can be transmitted from organism to organism regardless of the method of transmission including, but not limited to, by direct or indirect airborne transmission; bodily fluid transmission; transmission from or to any surface or object, solid, liquid or gas.For the avoidance of doubt **Communicable Disease** includes (but is not limited to) coronavirus disease 2019 (COVID-19) and any mutation or variation thereof.
- 1.11 **Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. **Computer Virus** includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.
- 1.12 **Core Business Activities** means the principal areas or activities that **You** are founded on or are focused on and from which **You** derive a majority of **Your** turnover.
- 1.13 **Court or Tribunal** means a court, tribunal or other statutory body of competent jurisdiction within the Commonwealth of Australia and its external territories and an Australian State or Territory as agreed to by the **Claims Manager**.

- 1.14 **Coverholder** means Solution Underwriting Agency Pty Ltd
- 1.15 **Debt Recovery Professional** means the **Person** named as 'Debt Recovery Professional' in the Schedule to this **Policy**.
- 1.16 **Dispute** means any civil legal proceeding or action in a **Court or Tribunal** either commenced by **You** or commenced against **You** by an **Opponent** which relates to **Your Core Business Activities** and which falls within one of the **Heads of Cover**, except in relation to the **Head of Cover 2: Tax Audit** where it means an **ATO** audit, notice of which has been received from the **ATO** in writing.
- 1.17 **Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- 1.18 **Excess** means the agreed amount specified in the Schedule to this **Policy** that **You** are required to pay towards a valid **Claim** in respect of each valid **Claim** before **We** are liable to pay to **You** the remaining amount of indemnity for such **Claim**, subject always to the limits set out in this **Policy**.
- 1.19 **GST** means goods and services tax.
- 1.20 **Heads of Cover** means the heads of cover listed in this **Policy** at clause 2 for which **We** will indemnify **You** for in accordance with the terms of this **Policy**.
- 1.21 **Income Tax Legislation** means any Commonwealth, State or Territory legislation which imposes obligations in relation to income tax or fringe benefits tax.
- 1.22 **Opponent** means any third-party **Person** who **You** are engaged in a **Dispute** with.
- 1.23 **Opponent's Costs** means the legal fees and disbursements of an **Opponent** arising from a **Dispute** which are either:
- 1.23.1 ordered by a **Court or Tribunal** to be paid by **You** to an **Opponent**; or
- 1.23.2 agreed by the **Claims Manager** in a negotiated settlement with an **Opponent** as payable by **You** to an **Opponent**.
- 1.24 **Person** means any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organisation or other legal entity.
- 1.25 **Policy** means the insurance contract entered into between **You** and **Us** which consists of this policy wording and the Schedule.
- 1.26 **Policy Limits** means the maximum amounts **We** will pay under this **Policy**, as stated in the Schedule to this **Policy**, in respect of **Any One Claim** and **Aggregate Claims Limit**.
- 1.27 **Policy Period** means the period for which this **Policy** is in force as specified in the Schedule to this **Policy**.
- 1.28 **Relating To** means relating to; in connection with; arising under; arising out of; arising from; as a result of; resulting from; as a consequence of; attributable to; contributed to by; caused by; involving; and any other term commonly used and/or understood to reflect or describe a nexus and/or connection from one thing to another whether direct or indirect.
- 1.29 **Statutory Licence** means a licence granted to **You** by the government or a local authority which is utilised by **You** to conduct **Your Core Business Activities**.
- 1.30 **Us/We/Our** means Certain Underwriters at Lloyd's of London specified as 'Insurer' in the Schedule to this **Policy**.
- 1.31 **You/Your** means the commercial entity named as 'Insured' in the **Schedule** to this **Policy**.
- 1.32 **Your Costs** means the reasonable legal and/or professional fees and disbursements an **Appointed Professional** incurs on **Your** behalf in the course of pursuing or defending a **Claim** which are payable by **You** to the **Appointed Professional**.

2. HEADS OF COVER

We will indemnify **You** under the following **Heads of Cover**, subject always to the terms of this **Policy** including, but limited to, the applicable **Policy Limits** and **Excess**:

2.1 Head of Cover 1: Contractual Disputes

2.1.1 **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** arising from a **Dispute** between **You** and **Your Opponent** in respect of an alleged breach, whether by **You** or by **Your Opponent**, of the terms of a written contract entered into by **You** and **Your Opponent** for the supply of goods and/or services.

2.1.2 Any **Claim** in relation to clause 2.1.1 shall be subject to the following conditions:

2.1.2.1 The **Claim Amount** must be greater than either:

- (a) \$5,000 (five thousand Australian dollars); or
- (b) the applicable small claims threshold stipulated by the **Court or Tribunal** in which proceedings relating to the **Dispute** are to be commenced.

2.1.2.2 The **Claim Amount** must not exceed a maximum of 75% (seventy-five percent) of the total amount in **Dispute**.

2.1.2.3 Written notice of the **Dispute** must have been served by/on **You** no earlier than 90 (ninety) calendar days following the inception of this **Policy**, evidence of which **You** shall promptly provide to **Us** upon written request.

2.1.3 **We** will not indemnify **You** under this **Head of Cover** for:

2.1.3.1 A **Dispute** which relates to any contract other than for the supply of goods and/or services.

2.1.3.2 A **Claim** where the conditions in clause 2.1.2 have not be met or otherwise waived by **Us** in **Our** sole discretion.

2.1.3.3 A **Dispute** which relates to any contract entered into by **You** in respect of which coverage under any other **Head of Cover** in this **Policy** is applicable and therefore indemnity shall be provided in accordance with the terms of that **Head of Cover**, subject to the terms of that **Head of Cover**.

2.1.3.4 A **Dispute** which relates solely to non-payment where **You** or an **Opponent** has failed to pay in a timely manner in accordance with the terms of the relevant contract save for where **You** have completed the debt recovery process outlined in clause 2.7 (Head of Cover: Debt Recovery).

2.1.3.5 A **Dispute** arising from a contract relating to construction, building works or similar activities, save for where:

- (a) **Your Core Business Activities** are those of a builder or related industry; and
- (b) the **Dispute** is with a supplier directly related to **Your Core Business Activities**.

2.1.3.6 A **Dispute** arising from a contract:

- (a) for employment;
- (b) for the provision of insurance, securities, credit or guarantees;
- (c) relating to a motor vehicle;
- (d) related to the occupation of property including leases, tenancy agreements or a licence to occupy;
- (e) relating to the sale or purchase of real property;

2.1.3.7 **Disputes** over franchise agreements.

2.2 Head of Cover 2: Tax Audit

2.2.1 **We** will indemnify **You** for **Your Costs** in responding to an audit by the **ATO** in respect of:

2.2.1.1 An investigation or inquiry into **Your** tax affairs by the **ATO** in accordance with **Income Tax Legislation**;

2.2.1.2 A claim from the **ATO** that:

- (a) additional **GST** is due from **You**;
- (b) additional income tax or fringe benefits tax is due from **You** in accordance with **Income Tax Legislation**.

2.2.2 Any **Claim** in relation to clause 2.2.1 shall be subject to the following conditions:

2.2.2.1 Written notice of an audit by the **ATO** must have been served on **You** no earlier than 90 (ninety) calendar days following the inception of this **Policy**, evidence of which **You** shall promptly provide to **Us** upon written request.

2.2.2.2 In relation to the returns which are the subject of the **Dispute**, **You** must have:

- (a) appointed a suitably qualified and licenced accountant or tax professional to file **Your** tax returns;
- (b) filed all returns and responded to all demands within the relevant statutory time limits;
- (c) made all payments for due taxes and provided all necessary documentation to the **ATO** within the relevant time limits.

2.2.2.3 **You** must notify the **Claims Manager** as soon as possible if **You** are in receipt of a notice of audit and in any event no later than the date on which the final notice from the **ATO** notifying **You** of the end of an audit is received by **You** from the **ATO** as, from that date, the **Claim** will be deemed finalised and **Your Costs** will no longer be covered by this **Policy**.

2.2.3 **We** will not indemnify **You** under this **Head of Cover** for:

2.2.3.1 routine responses to requests for information and other contacts with the **ATO** which do not amount to an audit in the above outlined circumstances, including but not limited to Business Activity Statement, Superannuation fund and payroll tax audit visits.

2.2.3.2 costs which are not directly incurred in relation to the audit which is the subject of the **Claim**. If **Your Appointed Professional** conducts additional work outside of the scope of the **Claim**, costs will be apportioned as appropriate to ensure that only those costs directly incurred in relation to the audit are indemnified.

2.2.3.3 costs incurred as a result of an audit arising from a change in **Applicable Law** (including but not limited to **Income Tax Legislation**) which has retrospective effect.

2.2.3.4 costs incurred in relation to action taken by the Prosecutions Division of the **ATO** once an audit or investigation is transferred to that division.

2.2.3.5 costs in relation to tax avoidance schemes or other attempts to avoid due payment of tax or superannuation of any kind.

2.3 **Head of Cover 3: Statutory Licence Protection**

2.3.1 **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** incurred in seeking to protect **Your** rights under a **Statutory Licence** which is under threat of suspension, revocation or amendment, which, if not disputed, will have a material impact on **Your** ability to conduct **Your Core Business Activities**.

2.3.2 Any **Claim** in relation to clause 2.3.1 shall be subject to the condition that the **Statutory Licence** which is the subject of the **Claim** must be utilised by **You** to generate at least 20% (twenty percent) of **Your** gross operating income.

2.3.3 **We** will not indemnify **You** under this **Head of Cover** for any **Dispute** relating to a **Statutory Licence** which is:

- 2.3.3.1 suspended, revoked or amended as a result of a general industry wide policy rather than for a reason particular to **You**;
- 2.3.3.2 a first application for or standard renewal of a **Statutory Licence** due to lapse of time;
- 2.3.3.3 due to a suspension, revocation or amendment arising from a change in **Applicable Law**.

2.4 Head of Cover 4: Landlord Disputes

2.4.1 We will indemnify You for:

2.4.1.1 Your Costs and Your Opponent's Costs arising from a Dispute with Your commercial landlord arising out of an alleged breach of the lease, tenancy agreement or licence in place in respect of Your Business Premises;

2.4.1.2 Where Your Core Business Activities are those of a commercial landlord, Your Costs and Your Opponent's Costs arising from a Dispute with a tenant over an alleged breach of the lease, tenancy agreement or licence in place in respect of commercial premises leased to them by You,

provided that the consequences, as determined by Us, of not pursuing or defending the Dispute is that You will suffer significant financial loss.

2.4.2 Any Claim in relation to clause 2.4.1.2 shall be subject to You having correctly served any and all required statutory and/or contractual notices prior to bringing a Claim.

2.4.3 We will not indemnify You under this Head of Cover for any Dispute arising:

- (a) from the first negotiation of a lease, tenancy agreement or licence;
- (b) from the renewal, renegotiation or review of a lease, tenancy agreement or licence at normal expiry;
- (c) solely from a failure to pay rent or other amounts due under the terms of a lease, tenancy agreement or licence;
- (d) from the refusal of a party to meet obligations under the terms of a lease, tenancy agreement or licence when there is no Dispute that such obligations are owed;
- (e) from a contract or agreement which is not a lease, tenancy agreement or licence.

2.5 Head of Cover 5: Restrictive Covenants

2.5.1 We will indemnify You for Your Costs and Your Opponent's Costs arising from a Dispute with a former employee in relation to an alleged breach of a restrictive covenant, either by You or the former employee, contained within a written employment contract between You and the former employee.

2.5.2 Any Claim in relation to clause 2.5.1 shall be subject to, as determined in Our reasonable opinion:

2.5.2.1 the restrictive covenant being reasonable as to both scope and duration; and

2.5.2.2 the alleged breach by the former employee being capable of having a material detrimental effect on Your business' revenue generation and/or there being a financial benefit for You.

2.5.3 We will not indemnify You under this Head of Cover for any restrictive covenant exceeding 12 (twelve) months in duration.

2.6 Head of Cover 6: Third Party Damage to Good or Premises

2.6.1 We will indemnify You for Your Costs and Your Opponent's Costs of pursuing a third party who has by their own act or omission caused You uninsured losses by causing physical damage to Your Business Premises, or goods, machinery or other property located at Your Business Premises.

2.6.2 We will not indemnify You under this Head of Cover for any damage:

- (a) caused by You or Your own employees;
- (b) to goods not at Your Business Premises, unless under Your direct care and control;
- (c) to a motor vehicle, except where stationary and located at Your Business Premises.

2.7 Head of Cover 7: Debt Recovery

2.7.1 We will indemnify You for Your Costs arising from a Dispute with an Opponent where You are owed payment under an invoice which has not been settled despite the payment terms having expired.

2.7.2 Any Claim in relation to clause 2.7.1 shall be subject to the following process:

Stage 1:

- 2.7.2.1 **You** must log on to www.solutionunderwriting.com.au and complete the template letter with the applicable details and send this letter to the debtor.
- 2.7.2.2 If on expiry of the additional fourteen (14) calendar days allowed to pay as specified in the template letter **You** have not received payment, **You** can move to stage 2.

Stage 2:

- 2.7.2.3 **You** must provide full details of the amount due to the **Debt Recovery Professional** via the following email address: legalexpenditures@proclaim.com.au.
- 2.7.2.4 The **Debt Recovery Professional** will then communicate a letter on **Your** behalf advising the debtor that if they do not pay in seven (7) calendar days court proceedings will be issued.
- 2.7.2.5 If payment is still not forthcoming, the recovery will become a **Claim** under clause 2.1 (Head of Cover 1: Contractual Disputes), and the **Debt Recovery Professional** will issue court proceedings on **Your** behalf to seek recovery of the amount due.
- 2.7.3 **We** will not indemnify **You** under this **Head of Cover** for any debt sum of less than \$2,500 (thousand five hundred Australian dollars) for the initial pre-court proceedings stage (clause 2.7.2.3 and clause 2.7.2.4 above) and such amount shall rise to any debt sum of less than \$5,000 (five thousand Australian dollars) for the court proceedings issued in accordance with clause 2.7.2.5.

3. GENERAL EXCLUSIONS APPLICABLE TO ALL HEADS OF COVER

- 3.1 Cover is excluded under this **Policy** in respect of any **Claim**:
- 3.1.1 arising from outside of the territory of the Commonwealth of Australia; and/or New Zealand;
 - 3.1.2 arising from an appeal, unless otherwise agreed by the **Claims Manager**;
 - 3.1.3 arising from a dispute between **You, Us**, the **Coverholder** and/or **Claims Manager**;
 - 3.1.4 arising from a **Dispute** between **You** and any parent, subsidiary or otherwise related entity (including franchisor/franchisees) or any trust operated by **You**;
 - 3.1.5 where **You** have in place other insurance which indemnifies **You** for the same **Claim**, or where **You** are required by **Applicable Law** to have such a policy, whether one is in place or not;
 - 3.1.6 where **We** have suffered prejudice due to **Your** deliberate, intentional or reckless failure to take all reasonable steps to avoid a **Claim** arising;
 - 3.1.7 where **You** have acted with any criminal intent or have otherwise recklessly or through omission committed criminal act(s);
 - 3.1.8 where **You** have breached a term of this **Policy** in relation to that **Claim**;
 - 3.1.9 arising from one of the following:
 - 3.1.9.1 building work or construction;
 - 3.1.9.2 franchise agreements;
 - 3.1.9.3 planning laws or regulations;
 - 3.1.9.4 intellectual property of any kind, including but not limited to patents, copyrights, trademarks, passing off, registered designs and similar (unless directly related to a **Claim** under clause 2.5 (Restrictive Covenants));
 - 3.1.9.5 a warranty or guarantee;
 - 3.1.9.6 subsidence, land heave, land slip, mining or quarrying;
 - 3.1.9.7 allegations of defamation of any kind or malicious falsehood;
 - 3.1.9.8 judicial review;
 - 3.1.9.9 Worker's Compensation.

- 3.2 Notwithstanding any other provision, clause or term of this **Policy** and/or any endorsement thereof to the contrary, this **Policy** excludes and does not insure any **Claim**, loss, liability, damage, cost, fine, penalty, expense or other sum of any kind whatsoever **Relating To**, whether directly or indirectly and/or regardless of any other cause or event contributing concurrently or in any other sequence thereto, a **Communicable Disease** and/or any fear or threat (whether actual or perceived) thereof.

4. CLAIMS CONDITIONS

- 4.1 In the event of:

- 4.1.1 a **Claim** arising under this **Policy**; or
- 4.1.2 the receipt by **You** of notice from any party of a specified and definite intention to make a **Claim** against **You**; or
- 4.1.3 any cause, event, **Dispute** or circumstance which may give rise to a **Claim**,

You must, as soon as practicable, give written notice to the **Claims Manager** to the following address:

Proclaim Management Solutions Pty Ltd
271 Collins Street
Melbourne, VIC 3000
Email: legalexpenditures@proclaim.com.au

with a courtesy email to the **Coverholder**: claims@solutionunderwriting.com.au

Any delay in reporting the above by **You** may prejudice **Your** position under this **Policy**.

- 4.2 It is a condition to indemnity being provided under this **Policy** that **You** receive formal written confirmation from the **Claims Manager** that **Your Claim** is covered before **You** start incurring **Your Costs** or **Opponent's Costs**. Any costs incurred by **You** before the **Claim** has formally been accepted by the **Claims Manager** are not covered under this **Policy**.
- 4.3 **Claims Made and Notified**
- 4.3.1 This is a "claims made" **Policy**, which means that **You** shall only be indemnified for **Claims** where:
- 4.3.1.1 **You** first become aware of cause, event, **Dispute** or circumstance giving rise to the **Claim** during the **Policy Period**; and
- 4.3.1.2 **You** first notify the **Claim** to the **Claims Manager** during the **Policy Period**.
- 4.4 Upon accepting the **Claim**, the **Claims Manager** will engage an **Appointed Professional** on **Your** behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate in its opinion throughout the course of the **Claim**.
- 4.5 You must authorise and instruct the **Appointed Professional** to comply fully with the **Claims Manager** at all times throughout the duration of the **Claim**.
- 4.6 **You** must comply promptly with all requests for information or other forms of assistance made by either the **Claims Manager** or **Appointed Professional** which is in **Your** power to provide in connection with the investigation, defence or settlement of any **Claim** or investigation of any circumstances which may give rise to a **Claim** in respect of which indemnity is sought under this **Policy** including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
- 4.7 **You** must where possible take all reasonable and necessary steps to recover any costs paid by **Us** and recoverable by **You** and have these costs paid directly to **Us**.
- 4.8 **You** must advise the **Claims Manager** in writing immediately if **You** receive an offer to settle or compromise a **Claim** and must not admit liability for, settle or make or promise any payment in respect of any **Claim**, circumstance or event which is likely to be the subject of indemnity under this **Policy** without the prior written approval of the **Claims Manager**.
- 4.9 **We** can, at any time during the course of a **Claim**, pay to **You** an amount equal to the **Claims Manager's** reasonable view of the value of the **Claim** in full and final settlement of the **Claim**.

- 4.10 If **You** fail to accept the advice of the **Appointed Professional** to settle a **Claim**, **We** shall be permitted to refuse to indemnify **You** under this **Policy** from the date on which you refuse such advice.
- 4.11 **We** will not make any payment under this **Policy** until such time as **You** have paid and exhausted the **Excess**.
- 4.12 **We** shall be entitled, if **We** so desire, to take over and conduct in **Your** defence or settlement of any **Claim**, or to prosecute in **Your** name for **Our** benefit and at **Our** expense, any **Claim**.

5. REQUIREMENT FOR REASONABLE PROSPECTS OF SUCCESS

- 5.1 All **Claims** under this **Policy**, however arising, are subject to the following:
- 5.1.1 the action taken by **You** in pursuing or defending the **Claim** must be reasonable and proportionate with regard to the costs to be expended, and there must not be a more appropriate manner in which to protect **Your** interests; and
- 5.1.2 the **Dispute** must have a reasonable prospect of success by **You**. This means that in the opinion of the **Claims Manager** (considering the advice of the **Appointed Professional** if appointed) **You** have a better than 50% (fifty percent) chance of achieving a positive outcome in the **Dispute**.
- 5.2 For the purposes of 5.1.2 above, a “positive outcome” means it is found that **Your** version of events are determined to be more likely to be true than those of **Your Opponent** and therefore the decision will go in **Your** favour.
- 5.3 Having reasonable prospects of success is an ongoing requirement and if prospects fail to meet the above threshold at any point during the course of a **Claim**, indemnity under this **Policy** will be withdrawn. If **You** choose to continue the defence or pursuit if a case in those circumstances it will be at **Your** own cost, but should **You** ultimately achieve a positive outcome (as defined at 5.2 above) **We** will reimburse **You** for any costs or disbursements you fail to recover from **Your Opponent**.
- 5.4 The **Claims Manager** will provide **You** with written reasons if it decides that the **Claim** does not meet the reasonable prospects of success requirement. If **You** disagree with the **Claims Manager** over whether a **Claim** has prospects or not, **You** can either:
- 5.4.1 at **Your** own expense seek an opinion from independent legal counsel. If this opinion changes the **Claims Manager’s** view (in its sole discretion), **We** will reimburse **You** for the cost of the opinion (subject to **Policy Limits**) and **Your Claim** shall be covered from that point subject to the terms and conditions of this **Policy**; or
- 5.4.2 access **Our** Complaints process outlined above.

6. MISREPRESENTATION AND NON-DISCLOSURE

- 6.1 If **You**:
- 6.1.1 fail to disclose any matter which **You** are under a duty to disclose by **Applicable Law** to **Us**; or
- 6.1.2 make a misrepresentation to **Us** prior to the inception date of this **Policy**,
to the extent such actions or inactions are:
- 6.1.2.1 fraudulent, without prejudice to the other rights **We** may have, however arising, under this **Policy**, **We** shall have the right to avoid this **Policy**;
- 6.1.2.2 non-fraudulent, if **We** would have entered into this **Policy** on different terms (including, but not limited to, the premium payable) having been aware of such actions or inactions, **Our** liability in respect of any **Claim** shall be reduced to what it would have been had the concealment, misrepresentation or non-disclosure not taken place.

7. FRAUD AND DISHONEST CONDUCT

If any **Claim** is in any respect fraudulent or if any fraudulent means or devices is used by **You** or anyone acting on **Your** behalf to obtain any benefit under this **Policy**, or if any destruction or damage is occasioned by **Your** wilful act or with **Your** connivance, **We**, without prejudice to any other right(s) **We** might have under this **Policy**, shall, subject to the provisions of the Insurance Contracts Act 1984, be entitled to refuse to pay such **Claim**.

8. CANCELLATION RIGHTS

- 8.1 **You** shall have the right to cancel this **Policy**:
- 8.1.1 by the surrender of this **Policy** to **Us**; or
 - 8.1.2 by giving at least ten (10) calendar days' advance written notice to **Us**, stating when thereafter such cancellation will be effective; or
 - 8.1.3 in the event that **We**:
 - 8.1.3.1 cease underwriting or formally announce its intention to do so whether entirely or in a class of business which includes this **Policy**; or
 - 8.1.3.2 are the subject of an order or resolution for winding up, enter into a run-off arrangement, are subject to a scheme of arrangement, appointment of administrators, provisional liquidators or announce an intention to take any of the foregoing actions; or
 - 8.1.3.3 have authority to carry on insurance business withdrawn, by providing written notice of **Your** intent to cancel this **Policy**.
- 8.2 **We** shall have the right to cancel this **Policy** by giving **You** at least three (3) days' notice in writing of the date from which this **Policy** will be cancelled, where such notification may be delivered personally or posted to **You** at the address last notified to **Us**, in the following circumstances:
- 8.2.1 in accordance with **Applicable Law** including, but not limited to the Insurance Contracts Act 1984 (Cth); or
 - 8.2.2 if **You** failed to comply with **Your** duty of disclosure in accordance with **Applicable Law**; or
 - 8.2.3 where **You** have made a misrepresentation to **Us** during negotiations prior to the issue of this **Policy**; or
 - 8.2.4 where **You** have failed to comply with a provision of this **Policy**, including the term relating to payment of premium; or
 - 8.2.5 where **You** have made a fraudulent **Claim** under this **Policy** or under some other contract of insurance that provides cover during the same period of time that this **Policy** covers **You**;
 - 8.2.6 where an act or omission by **You** has the effect of altering the state or condition of the subject-matter of the contract or of allowing the state or condition of that subject-matter to alter.
- 8.3 If **You** or **We** cancel this **Policy** **We** may deduct a proportion of the premium for time on risk, reasonable administrative costs related to the acquisition and termination of this **Policy** **We** incur and any government taxes or duties **We** cannot recover.

9. INSOLVENCY

If at any point during the **Policy Period** or duration of a **Claim** **You** file for bankruptcy; file a winding up petition; go into liquidation; enter any arrangement with creditors; or have a receiver or administrator appointed, **We** will immediately refuse any further indemnity under this **Policy**.

10. TERRORISM / WAR / CONTAMINATION EXCLUSION

- 10.1 This **Policy** excludes cover for losses as a result of terrorism.
- 10.2 In the event that damage to property occurs and the cause of the damage is declared a terrorist incident by the responsible Minister, then **You** may be afforded protection within the limits of indemnity of this **Policy** by virtue of the Terrorism Insurance Act 2003. The operation of this Act may also serve to reduce the settlement of your loss to a percentage of the otherwise recoverable loss. In the event that the settlement is reduced then this will be at the direction of the Minister.
- 10.3 A more detailed explanation of the operation of the Terrorism Insurance Act 2003 can be obtained at www.arpc.gov.au.

10.4 This **Policy** excludes loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other sequence to the loss:

10.4.1 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, conspiracy, rebellion, revolution, insurrection, mutiny, military or usurped power; or

10.4.2 confiscation or nationalisation, or requisition or destruction of or damage to property by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority.

10.5 Furthermore any loss, destruction or damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to clause 10.4.1 or clause 10.4.2 is also excluded from this **Policy**.

11. ELECTRONIC DATA EXCLUSION

11.1 Notwithstanding any provision to the contrary within this **Policy** or any endorsement thereto, it is understood and agreed that this **Policy** does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of **Electronic Data** from any cause whatsoever (including but not limited to **Computer Virus**) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any sequence to the loss.

12. STRIKES, RIOTS OR CIVIL COMMOTION EXCLUSION

Notwithstanding anything contained herein to the contrary, this **Policy** excludes any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by or arising from riot, civil commotion, strikers, locked out workers, or persons in labour disturbances.

13. GENERAL CONDITIONS

13.1 Confidentiality

You will not, without **Our** prior written consent, disclose the existence of this **Policy** to any person or party outside **Your** organisation except insofar as is required in order to comply with the terms of this **Policy** or by **Applicable Law**.

13.2 Subrogation

In the event of any payment under this **Policy**, **We** will be subrogated to the extent of such payment to all **Your** rights of recovery. In such case **You** will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable **Us** effectively to bring suit in **Your** name.

13.3 How Goods and Services Tax (**GST**) Affects **Claim** Payments

13.3.1 Where **We** make a payment under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **You** are, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

13.3.2 Where **We** make a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **You** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

13.4 Sanction Limitation and Exclusion

We shall not be deemed to provide cover and **We** shall not be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

13.5 Amendments

Any amendment of a clause, condition, term or provision of this **Policy** must be set out in writing and signed by **You** and **Us**.

13.6 Third Party Beneficiary Rights

We and **You** do not intend to create in any other person the status of a third-party beneficiary, and this **Policy** will not be construed so as to create such status.

13.7 Assignment

The provisions of this **Policy** shall inure to the benefit of and be binding upon **You** and neither this **Policy** nor any right, authority or obligation arising under it may be assigned, transferred or otherwise disposed of, in whole or in part, by **You** without **Our** prior written consent.

13.8 Notices

Any notice, including notice of termination or breach of this **Policy** or any statutory notice or any notice relating to **Applicable Law** required or permitted to be given to **Us** shall be in writing and shall be delivered personally or sent by first class post pre-paid recorded delivery (and air-mail if overseas) with a courtesy copy by email and addressed as follows:

Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: solution@solutionunderwriting.com.au

13.9 Waiver

No provision of this **Policy** shall be deemed waived by a course of conduct. Any waiver must be in writing signed by **Us** and **You** and stating specifically that it was intended to modify this **Policy**. No waiver of any provision of this **Policy** shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.

13.10 Severability

If any provision of this **Policy** is, for any reason, held to be invalid, prohibited, or otherwise unenforceable by legal authority of competent jurisdiction, the other provisions of this **Policy** shall remain enforceable and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by **Applicable Law**.

13.11 Governing Law and Jurisdiction

13.11.1 This **Policy** and the Schedule will be interpreted in accordance with the law of the Commonwealth of Australia. This **Policy** and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **Policy** or the Schedule shall bear such specific meaning wherever it may appear.

13.11.2 In the event of a dispute arising under this **Policy**, **We**, at the request of **You**, will submit to the jurisdiction of any competent **Court** in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such **Court**.

Issued by
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