

Elite II Professional Indemnity Insurance Policy

Firm: The Australian Trainers Association
representing and on behalf of Licenced
Trainers

Period of Insurance: 1 August 2018 - 1 August 2019

CHUBB®

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Elite II Professional Indemnity Insurance Policy



Duty of Disclosure

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.

Elite II Professional Indemnity Insurance Policy Schedule

No.	Title	Description
Item 1.	Policy Number:	O2PI012618
Item 2.	Firm:	The Australian Trainers Association representing and on behalf of Licensed Trainers
Item 3.	Principal Address:	Australian Trainers Association Level 1, 400 Epsom Road FLEMINGTON VIC 3031 AUSTRALIA
Item 4.	Business:	Licensed thoroughbred racehorse training and/or pre-training including the following activities: (a) training methods; and (b) management of nomination, registration and entry of race horses; and (c) buying and/or selling of race horses.
Item 5.	Period of Insurance:	From: 1 August 2018 at 4:00 pm L.S.T To: 1 August 2019 at 4:00 pm L.S.T Both days inclusive. L.S.T (Local Standard Time means the time applicable on the relevant date at the Principal Address).
Item 6.	Limit of Liability: Loss of Documents Sub-Limit under Extension 2.3:	(a) AUD 500,000 any one Claim and in the aggregate in respect to each Licensed Trainer (b) AUD 4,000,000 in the aggregate (c) AUD 10,000 in the aggregate
Item 7.	Excess:	(a) AUD 1,000 any one Claim ; or (b) AUD 10,000 or 10% of the amount claimed (whichever is the greater) if the claim arises directly from the loss of prize money.
Item 8.	Retroactive Date:	Unlimited
Item 9.	Optional Extensions:	Not Applicable
Item 10.	Premium:	As Agreed
Item 11.	Endorsements effective at the inception of the Policy :	Nil
Item 12.	Continuity Date:	1 August 2007

Signed for and on behalf of Chubb Insurance Australia Limited

Signed:



Date: 1 August 2018

Elite II Professional Indemnity Insurance Policy Wording

In consideration of the payment of the premium and in reliance upon all statements made and information provided to **Chubb**, including statements made in the **Proposal** and materials accompanying it, which it is agreed shall form the basis of this insurance, and subject to all the terms and conditions of this **Policy**, **Chubb** agrees as follows:

1. Insuring Clause

1.1 Cover

Chubb shall pay to or on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability in respect of the conduct of the **Professional Services**, provided that such **Claim** is first made against the **Insured** during the **Period of Insurance**.

2. Automatic Extensions

Each of the following Extensions automatically applies unless otherwise stated in the endorsements. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions and conditions of this **Policy** unless otherwise stated in this Clause 2. None of these Extensions increase the Limits of Liability specified in the **Schedule**.

2.1 Defamation

Chubb agrees to extend cover to any **Loss** arising from a **Claim** for civil liability for unintentional defamation by the **Insured** in the conduct of the **Professional Services**.

Chubb shall not be liable to make any payment under this **Policy** for intentional defamation.

2.2 Joint Venture Liability

Chubb agrees to extend cover to any **Loss** arising from a **Claim** against the **Insured** for civil liability arising from the **Insured's** participation in any **Joint Venture** in the conduct of the **Professional Services**.

Any indemnity afforded under this Extension 2.2 shall be limited to the **Insured's** proportion of any liability incurred by such **Joint Venture**.

This Extension 2.2 neither affords coverage to any person or entity with whom or which the **Insured** is in a **Joint Venture** nor makes any such person or entity an **Insured**.

2.3 Loss of Documents

Chubb agrees to extend cover to any **Loss** arising from a **Claim** for loss of or damage to or destruction of those **Documents** for which the **Insured** is legally responsible in the conduct of the **Professional Services** provided that such loss, damage or destruction is first discovered and reported to **Chubb** during the **Period of Insurance** and, in the case of loss of **Documents**, which cannot be found after diligent search.

The cover provided by this Extension will not apply to pay that part of any **Loss** arising from a **Claim** which:

- (a) exceeds the reasonable and necessary costs, charges and expenses in replacing or restoring the **Documents**; and/or
- (b) comprises costs, charges or expenses directly or indirectly relating to any **Documents** which have been destroyed, damaged or lost as a result of wear, tear or other gradually operating causes or **Computer Virus**.

Chubb's total liability under this Extension 2.3 shall not exceed the sub-limit specified in Item 6.(c) of the **Schedule**.

The cover provided by this Extension 2.3 applies regardless of the **Retroactive Date**.

Notwithstanding Condition 6.2 of this **Policy** the **Excess** does not apply to this Extension 2.3.

2.4 Run Off Cover for Insured Entity

In the event that a **Firm** is merged into or acquired by another entity or otherwise ceases to exist or operate or is subject to an **Insolvency Event** during the **Period of Insurance**, the coverage provided under the **Policy** for such **Firm** shall continue until the end of the **Period of Insurance**, provided that such coverage shall only apply in respect of a **Claim** that arises from the conduct of its **Professional Services** prior to the date the **Firm** ceased to exist or operate, was merged into or acquired by another entity or became the subject of an **Insolvency Event**.

Chubb may, at its sole discretion and on such additional terms, conditions and premium as **Chubb** may require, extend the coverage provided by this Extension 2.4 to include **Claims** first made against the **Insured** within a period of eighty-four (84) months from the end of the **Period of Insurance**, provided that such coverage shall only apply in respect of a **Claim** that arises from the conduct of the **Professional Services** prior to the date the **Firm** ceased to exist, operate or was merged into or acquired by another entity or became the subject of an **Insolvency Event**.

2.5 Continuous Cover

Notwithstanding Exclusion 4.8(c) (Prior Matters) this **Policy** extends to cover the **Insureds** for **Loss** arising from any **Circumstance** which could have been first notified to **Chubb** under an earlier Professional Indemnity Insurance policy issued by **Chubb** and which is notified during the **Period of Insurance**, provided that:

- (a) the **Insured** has maintained with **Chubb** and without interruption, professional indemnity insurance from the **Continuity Date** as specified in Item 12. of the **Schedule** up until the date this **Policy** commenced; and
- (b) the failure of the **Insured** to disclose the **Circumstance** before the commencement of the **Period of Insurance** was not a result of any fraudulent intention to mislead or misrepresent to **Chubb**; and
- (c) the **Insured's** entitlement to an indemnity will be determined in accordance with the terms and conditions of the policy held by the **Insured** with **Chubb** on the date when the **Insured** first became aware of the **Circumstance** provided that **Chubb's** Limit of Liability will be the lower of the one available under:
 - (i) the policy held by the **Insured** with **Chubb** when the **Insured** first became aware of the **Circumstance**; or
 - (ii) this **Policy**; and
- (d) the **Insured's** entitlement to an indemnity will be reduced by the amount that, in the reasonable opinion of **Chubb**, fairly represents the extent to which **Chubb's** interests were prejudiced by the failure to notify **Chubb** of the **Circumstance**; and
- (e) if the policy referred to in paragraph (c) above was co-insured, then **Chubb** will not be liable for more than its proportion of the indemnity provided by that policy; and
- (f) this Extension 2.5 does not apply to and is subject to Exclusion 4.8(a) and (b) (Prior Matters); and
- (g) if the **Insured's** rights under this clause are exercised the **Insured** agrees to claim on this **Policy** only and to make no claim on such earlier policy.

2.6 Emergency Defence Costs

If it is not possible for the **Insured** to obtain **Chubb's** written consent prior to the incurring of **Defence Costs**, **Chubb** will give retrospective consent as long as **Chubb's** consent is sought within thirty (30) days of such **Defence Costs** being incurred.

Chubb's liability under this Extension 2.6 in respect of **Defence Costs** incurred for each **Claim** shall not exceed ten percent (10%) of the Limit of Liability specified in Item 6.(a) or ten percent (10%) of the sub-limit of liability specified in Item 6.(d) of the **Schedule** respectively. For the avoidance of doubt, **Chubb's** total liability under this Extension 2.6 in respect of all **Defence Costs** incurred for all **Claims** shall not exceed the limit of liability specified in Item 6.(b) of the **Schedule** or the sub-limit of liability specified in Item 6.(d) of the **Schedule** respectively.

2.7 Advancement of Defence Costs

Chubb shall advance any covered **Defence Costs** as provided under this **Policy** within thirty (30) days of receipt and approval of an invoice for such **Defence Costs**.

2.8 Discovery Period

If **Chubb** or the **Insured** does not renew this **Policy**, **Chubb** shall extend the cover under this **Policy** for a discovery period of forty-five (45) days at nil additional premium which shall run from the date this **Policy** is not renewed. This Extension does not apply if there is a fraudulent claim under the **Policy** by or on behalf of the **Insured**.

The discovery period shall only apply to a **Claim** first made against the **Insured** before or during such forty-five (45) day discovery period, but only in respect of conduct of the **Professional Services** prior to the non-renewal of this **Policy**.

Chubb shall not be liable to make any payment in respect of any **Claim** first made against the **Insured** during the discovery period if at any time the **Insured** obtains any other professional indemnity insurance covering in whole or in part the discovery period.

2.9 Competition & Consumer Act 2010

Chubb shall pay on behalf of the **Insured** any **Loss** arising from any **Claim** for civil liability under the Consumer & Competition Act 2010 (Cth), the Trade Practices Act 1974 (Cth) or any Fair Trading Acts enacted by the States or Territories of Australia, in the conduct of the **Professional Services** provided that such **Claim**:

- (a) arises from an act, error or omission of the **Insured** occurring on or after the **Retroactive Date**; and
- (b) does not involve any liability under the penal or criminal provisions of those Acts.

2.10 Civil Compensatory Orders

Chubb agrees to extend **Loss** arising from a **Claim**, to include any civil compensatory order (not being an award of damages) that results from a contravention of any penalty provision of a statute or legislative provision provided that:

- (a) the cover provided by this Extension 2.10 will not apply to any civil compensatory order directly or indirectly caused by, arising out of or in any way connected with any legislative contravention which is based upon recklessness; and
- (b) **Chubb's** total liability under this Extension 2.10 shall be two hundred and fifty thousand dollars (\$250,000) in the aggregate.

3. Optional Extensions

Not Applicable

4. Exclusions

Chubb shall not be liable for any **Loss** arising from any **Claim** or any other payment under this **Policy**:

4.1 Assumed Liabilities & Duties

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged liability assumed under any contract, agreement or understanding except to the extent that such liability would have attached to the **Insured** in the absence of such contract, agreement or understanding.

4.2 Financial Failure & Trading Debts

directly or indirectly caused by, arising out of or in any way connected with any debt of an **Insured** or any guarantee or other undertaking or obligation given by an **Insured** for a debt.

4.3 Fraud, Dishonesty & Intentional Conduct

directly or indirectly caused by, arising out of or in any way connected with any **Insured** committing or condoning or allegedly committing or condoning any:

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

4.4 Managerial Liability

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged breach by an **Insured** of a duty owed in the capacity of a director, secretary, trustee or officer.

4.5 Owners or Occupiers Liability

directly or indirectly caused by, arising out of or in any way connected with:

- (a) the ownership, management, control or occupation of real property by or on behalf of the **Insured**; or
- (b) the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.

4.6 Obligations to Employees

directly or indirectly caused by, arising out of or in any way connected with any breach of any obligation owed to any **Employee** arising out of or in the course of that **Employee's** employment by the **Firm**.

4.7 Pollution

directly or indirectly caused by, arising out of or in any way connected with **Pollution** or **Pollutants** in whatever form or quantity.

4.8 Prior Matters

directly or indirectly caused by, arising out of or in any way connected with any:

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

4.9 Products Liability

directly or indirectly caused by, arising out of or in any way connected with any goods manufactured, distributed, supplied, installed, treated, assembled or processed by or on behalf of any **Insured**.

4.10 Related Persons & Entities

brought or maintained by or on behalf of:

- (a) any **Insured** or parent company of any **Insured**; or
- (b) any entity within the same group of companies as the **Insured**; or
- (c) any person or entity who, at the time of the act, error or omission giving rise to the **Claim** is a **Relative** of any **Insured** or controlled by a **Relative** of any **Insured**.

4.11 War & Terrorism

directly or indirectly caused by, arising out of or in any way connected with or in consequence of:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government, public or local authority; or
- (b) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

4.12 Intellectual Property

directly or indirectly caused by, arising out of or in any way connected with the actual or alleged infringement of any **Intellectual Property** right.

4.13 Bodily Injury/Property Damage

directly or indirectly caused by, arising out of or in any way connected with any physical injury, sickness, disease, death, mental injury, mental anguish or nervous shock or any loss of, damage to or destruction of property (including the loss of use thereof).

4.14 Syndication Activity

directly or indirectly caused by, arising out of or in any way connected with any activities whereby the **Insured** facilitates and/or promotes the syndication of racehorses where an Australian Financial Services Licence is required.

4.15 Breeding Activity

directly or indirectly caused by, arising out of or in any way connected with any activity whereby the **Insured** manages, facilitates and/or promotes breeding for or of racehorses.

4.16 Performance Exclusion

directly or indirectly caused by, arising out of or in any way connected with any warranty or statement as to performance of a horse.

4.17 Workers Compensation Insurance

directly or indirectly caused by, arising out of or in any way connected with any event covered by the **Insured's statutory worker's compensation insurance**.

4.18 Veterinary Exclusion

directly or indirectly caused by, arising out of or in any way connected with veterinary or medical activities or advice or other related medical services provided this Exclusion does not apply to any activities where the **Insured** is administering prescription medication to their client's racehorses under the direction or advice of a qualified and licensed veterinarian.

5. Conditions

Claims Conditions

5.1 Notification of Claims

- (a) The **Insured** must give written notice of any **Claim** as soon as practicable, but always no later than ninety (90) days after the expiry of the **Period of Insurance**, or thirty (30) days after the expiration of the discovery period provided under Extension 2.8 (Discovery Period), if applicable, whichever is the later, to:

Chubb Insurance Australia Limited
ABN: 23 001 642 020 AFSL: 239687

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

Email: aus.financiallinesclaims@chubb.com

- (b) All notifications under this **Policy** must include the following information:
- (i) a specific description of the demand or assertion comprising the **Claim**, including the date when and manner in which the **Insured** first became aware of the matter; and
 - (ii) the details of any parties involved; and
 - (iii) a copy of any written demand or assertion and any document relating to the commencement of proceedings against the **Insured** once available.

5.2 Conduct of Proceedings

- (a) It is the duty of the **Insured**, not **Chubb**, to defend any **Claim** made against an **Insured**. **Chubb**, however, may take over and conduct (in the name of any **Insured**) the defence of any **Claim** in respect of which **Chubb** is or may be liable to indemnify such **Insured**.
- (b) An **Insured** must not incur any **Defence Costs** without the prior written consent of **Chubb**, which shall not be unreasonably withheld. Save as provided for in Extension 2.6 (Emergency Defence Costs) of this **Policy**, **Chubb** is not liable to indemnify any **Insured** for any **Defence Costs** unless **Chubb** provides its prior written consent to the incurring of such **Defence Costs**.
- (c) An **Insured** must not settle or make any admission, offer, payment or otherwise assume any contractual or other obligation in relation to any **Claim** in respect of which **Chubb** is, or may be, liable to indemnify any **Insured**, without the prior written consent of **Chubb**. **Chubb** is not liable to indemnify any **Insured** for any settlement, admission, offer, payment or assumed obligation unless **Chubb** provides its prior written consent.

5.3 *Multiple Claims and Related Conduct*

For the purpose of determining cover under this **Policy**, all **Claims** arising from:

- (a) one act, error or omission; or
- (b) acts, errors or omissions which are the same or are attributable to the one source or originating or underlying cause,

shall be regarded as one **Claim**.

5.4 *Mitigation and Co-operation*

- (a) The **Insured** must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any actual or potential **Loss** arising from any actual or possible **Claim** and to avoid or minimise any actual or potential **Defence Costs** arising from any actual or possible **Claim** under this **Policy**.
- (b) Each **Insured** must, at its own expense and on an ongoing basis, give **Chubb** and any investigators or legal representatives appointed by **Chubb** all information they reasonably require, and full co-operation and assistance in the conduct of any investigation (including investigations for the purpose of enabling **Chubb** to determine its liability to provide an indemnity under this **Policy**), defence, settlement, avoidance or reduction of any actual or possible **Claim** or any proceedings.

5.5 *Disclosure of Information*

Legal representatives appointed by **Chubb** to act on an **Insured's** behalf shall be entitled to disclose to **Chubb** any information obtained while so acting and each **Insured** agrees to waive any claim for legal professional privilege to the extent that the privilege would otherwise prevent such legal representatives from disclosing information to **Chubb**.

5.6 *Disputes as to Defence & Settlement of Claims*

- (a) If a dispute arises between **Chubb** and an **Insured** as to whether a **Claim** should be contested, neither **Chubb** nor the **Insured** will require the other to contest the **Claim** unless a Senior Counsel (to be mutually agreed) recommends that the **Claim** should be contested. **Chubb** will brief the Senior Counsel to advise, as an expert, on whether or not the **Claim** should be contested and if not, on the amount for which the **Claim** should be settled. In providing such advice and in making any recommendation as to settlement, the Senior Counsel is entitled to take into account both legal and commercial considerations. The Senior Counsel must have regard to the damages and costs that are likely to be recovered, the **Defence Costs** that will be incurred in contesting the **Claim** and the prospects of the **Claim** being successfully defended. The costs of obtaining this recommendation will be paid by **Chubb**.
- (b) If the Senior Counsel recommends that settlement of the **Claim** should be attempted, then settlement of the **Claim** must be attempted as recommended.
- (c) **Where settlement is attempted in accordance with the Senior Counsel's recommendation but is unsuccessful, Chubb will continue to indemnify the Insured subject to the terms and conditions of this Policy.**
- (d) If a settlement recommended by the Senior Counsel is acceptable to the claimant, but the **Insured** refuses to consent to such settlement, **Chubb's** liability will be limited to the amount for which the **Claim** could have been settled, plus the **Defence Costs** incurred up to the date the refusal to consent was made.

5.7 *Subrogation*

If any payment is made by **Chubb** in respect of a **Claim** under this **Policy**, **Chubb** will be subrogated to all rights of indemnity, contribution or recovery of the **Insured** in relation to that payment. No **Insured** may surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior written consent of **Chubb**.

Chubb will not exercise its right of recovery under this Condition 5.7 against another natural person **Insured**, except where that **Insured** has committed, participated in or condoned a dishonest, fraudulent, malicious or criminal act or omission or where such natural person **Insured** is entitled to an indemnity in respect of any **Claim** under any other insurance effected by him or on his behalf, but only to the extent of the indemnity granted by such other insurance policy.

General Conditions

5.8 *Limit of Liability*

- (a) The aggregate limit of **Chubb's** liability for all **Loss** arising from any one **Claim** is the sum specified in Item 6.(a) of the **Schedule**.
- (b) Any sub-limit specified in this **Policy** shall be **Chubb's** maximum aggregate liability under such sub-limit irrespective of the number of **Claims**, the amount claimed or the number of **Insureds** who make a claim under this **Policy**. Any sub-limit shall be part of and not in addition to the sum specified in Item 6.(b) of the **Schedule**.

Chubb's maximum aggregate liability under this **Policy** for all **Loss** arising from all **Claims**, irrespective of the number of **Claims** under this **Policy**, the amount claimed or the number of **Insureds** who make claims, is the sum specified in Item 6.(b) of the **Schedule**.

5.9 *Excess*

The **Insured** shall pay the first amount of each and every **Loss** arising from any one **Claim**, up to the amount specified in Item 7. of the **Schedule** as the **Excess**.

5.10 *Territorial Limits*

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

5.11 *Jurisdictional Limits*

Subject to Condition 5.3 (Territorial Limits) and to the extent permitted by law, coverage extends to **Claims** anywhere in the world, except for **Claims**:

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

5.12 *Policy Construction and Interpretation*

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

- (a) the singular includes the plural and vice versa; and
- (b) headings are merely descriptive and not to aid interpretation; and
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (d) references to an amount of money are references to that amount in Australian dollars unless otherwise provided; and

- (e) bolded words used in this **Policy** have the meanings set out in Section 7. (Definitions and Interpretation).

5.13 *Retroactive Date*

Save with respect to any coverage provided pursuant to Optional Extension 3.1 (Principal's Previous Business) only, if a **Retroactive Date** is specified, this **Policy** will not cover, and does not apply to, any **Claim** where the **Professional Services** leading to such **Claim** were or were alleged to have been provided or required to be provided, in whole or in part, before the **Retroactive Date**.

5.14 *Authorisation*

The first named **Firm** on the **Schedule** agrees to act on behalf of all **Insureds** with respect to:

- (a) the giving and receiving of all notices given under this **Policy** including as to cancellation; and
- (b) the payment of premiums and the receiving of any return premiums that may become due under this **Policy**; and
- (c) the negotiation, agreement to and acceptance of endorsements; and
- (d) the giving or receiving of any notice provided for in this **Policy**; and
- (e) the receipt of all amounts payable by **Chubb** under this **Policy**.

Each **Insured** agrees that the first named **Firm** shall act on its or their behalf and agrees to be bound by all acts or omissions of the first named **Firm**.

5.15 *Cancellation*

- (a) The **Insureds** may cancel this **Policy** only by the first named **Firm** on the **Schedule** giving thirty (30) days written notice to **Chubb**. If there are no matters notified to **Chubb** under this **Policy**, **Chubb** will allow a refund of unearned premium calculated in accordance with its customary short-term rates.
- (b) **Chubb** may cancel this **Policy** by written notice given to the **Insured** and in accordance with the requirements of the Insurance Contracts Act (Cth) 1984. If there are no matters notified to **Chubb** under this **Policy**, **Chubb** will allow a refund of unearned premium calculated in proportion to the unexpired time on risk but such refund will never be greater than seventy-five percent (75%) of the premium.

5.16 *Governing Law*

This **Policy** is governed by, and interpreted in accordance with, the laws of the Commonwealth of Australia and the State or Territory of the office of **Chubb** from which the **Policy** was issued. Disputes relating to interpretation of this **Policy** must be submitted to the exclusive jurisdiction of the Courts of that State or Territory.

5.17 *Other Insurance*

- (a) If any **Loss** arising from a **Claim** is insured under any other policy (whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise) entered into by or effected on behalf of the **Insured**, or under which the **Insured** is a beneficiary, whether prior or current, then to the extent permitted by the Insurance Contracts Act 1984 (Cth), this **Policy**, subject to its limitations, conditions, provisions and other terms, will only cover **Loss** to the extent that the amount of such **Loss** is in excess of the amount of such other insurance.
- (b) Clause 6.10(a) above does not apply to such other insurance that is written specifically as excess insurance over the Limit of Liability provided in this **Policy**.

5.18 Severability

The **Proposal** shall be construed as a separate proposal by each natural person **Insured**. With respect to the statements and particulars in the **Proposal**, no fact pertaining to or information possessed by any natural person **Insured** shall be imputed to any other natural person **Insured** to determine whether cover is available for such other natural person **Insured**.

For the purposes of determining coverage to the **Firm** under this **Policy**:

- (a) statements made or knowledge possessed by any past, present or future chief executive officer, chief financial officer, chief operating officer, managing director, chairman, managing partner, company secretary, chief legal officer or other senior personnel concerned in the management or control of that part of the **Business** relevant to the act, error or omission the subject of the **Claim**; and/or
- (b) imputation which arises by operation of law,

will be imputed to such **Firm**.

5.19 GST

Where **Chubb** makes payment under this **Policy**:

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

If an **Insured** makes a claim under this **Policy**, it must inform **Chubb** of its Australian Business Number if it has one.

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

6. Definitions & Interpretation

Act of Terrorism means:

- (a) an act, including but not limited to, the use of force, violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone, on behalf of, or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to anything in (a) above regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Business means the activities of the **Firm** set out in Item 4. of the **Schedule**.

Chubb means Chubb Insurance Australia Limited (ABN: 23 001 642 020 AFSL: 239687).

Circumstance means any fact, matter or circumstance which gives rise to a **Claim** or has the potential to give rise to a **Claim**.

Claim means:

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

- (b) any originating legal or arbitral process, cross claim, counterclaim or third party notice served upon the **Insured** which contains a demand made against the **Insured** for civil compensation or civil damages or non-monetary civil relief,

arising out of the conduct of (including a failure to perform) the **Professional Services**.

Computer System means electronic, wireless, web or similar system (including all hardware, firmware and software) used to process data or information in an analogue, digital, electronic or wireless format including computer programmes, electronic data processing media, electronic data, electronic data communications equipment, operating systems, computer network and networking equipment, servers, websites, extranet, and all input, output, processing, storage and online or offline media libraries, music, graphic, entertainment and other content (to the extent they hold electronic data).

Computer Virus means computer instructions placed on a **Computer System** without the owner or user's knowledge or consent that are designed to harm the **Computer System**. **Computer Virus** includes malicious codes, malware, Trojan horses, worms and time or logic bombs.

Continuity Date means the date specified in Item 12. of the **Schedule**.

Cyber and Privacy Infringement Liability means civil liability arising out of:

- (a) any **Internet** content;
- (b) the **Insured's** infringement of any right to privacy;
- (c) the **Insured's** breach of confidence or misuse of confidential information held on its **Computer System**; and/or
- (d) the **Insured's** failure to prevent a party, other than an **Insured**, from unauthorised access to, use of or tampering with **Computer Systems** including:
- (i) **Hacker Attacks**;
 - (ii) **Computer Virus** attacks;
 - (iii) **Theft of Electronic Data**; and
 - (iv) any inadvertent transmission by the **Insured** to a third party of any **Computer Virus**.

Defence Costs means reasonable legal and other professional fees, costs and expenses incurred by and with the prior written consent of **Chubb**, not to be unreasonably withheld or delayed, that are necessary to defend or appeal a covered **Claim**.

Documents means documents of any nature except money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument, legally owned by a client of the **Insured**.

Employee means

- (a) each person who was, is or becomes employed by the **Firm** in the ordinary course of the **Business** and who is paid by the **Firm** by way of salary or wages; or
- (b) a volunteer working without fee or reward in the ordinary course of the **Business**,

provided that the performance of whose duties is subject to the direction and control of the **Firm**.

Excess means the amount specified in Item 7. of the **Schedule**.

Firm means as specified in Item 2. of the **Schedule**.

Hacker Attack means the gaining of access to or use of any **Computer Systems** by a person not authorised to do so or in an unauthorised manner.

Insolvency Event means:

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

Insured means:

- (a) the **Firm**; and
- (b) each **Principal**, but only in respect of work performed in the capacity of a **Principal** of the **Firm**; and
- (c) the lawful spouse or domestic partner of each **Principal** only to the extent that such **Principal** would have been covered under this **Policy**, as the case may be, and only in respect of work performed by the **Principal** in their capacity as a **Principal** of the **Firm**; and
- (d) **Training Company** of a **Licensed Trainer**.

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

Internet means the worldwide public network of computer networks that enable the transmission of electronic data between different users.

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

Licensed Trainer means a racehorse trainer, pre-trainer or training partnership which has paid a premium for this **Policy** and is licensed by either:

- Racing Victoria Limited; or
- Racing New South Wales Ltd; or
- Racing Queensland Limited; or
- Racing and Wagering Western Australia; or
- Thoroughbred Racing S.A. Limited; or
- Racing Services Tasmania,

at the time of the conduct of the **Professional Services** that results in a **Claim** covered under this **Policy**.

Loss means all amounts which an **Insured** becomes legally obligated to pay in respect of a **Claim** (including but not limited to any damages, judgments entered or settlements reached) and **Defence Costs**. **Loss** does not include:

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

Period of Insurance means the period specified in Item 5. of the **Schedule**.

Policy means the contract of insurance between **Chubb** and the **Insured** which comprises this policy wording, the **Proposal**, the **Schedule** and any endorsement issued by **Chubb** varying the policy coverage.

Pollutant means any contaminant, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, asbestos, asbestos-containing materials, fumes, fungi, acids, alkalis, nuclear or radioactive material, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

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

Principal means where the **Firm** is or was:

- (a) a company, each director of that company; and
- (b) a partnership, each partner of that partnership and each person held out as a partner; and
- (c) a sole practitioner, that practitioner,

and includes each former **Principal** and each person who becomes a **Principal** during the **Period of Insurance**.

Professional Services means the **Business** performed or required to be performed by an **Insured** for or on behalf of a client of the **Insured**.

Proposal means the written proposal and any supplementary proposal including any statements and information contained therein and any material relied upon by **Chubb** in issuing cover under this **Policy**, or any policy issued by **Chubb** of which this **Policy** is a renewal.

Relative means:

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

Retroactive Date means the date specified in Item 8. of the **Schedule**.

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

Subsidiary means any entity:

- (a) over which the **Firm** is in a position to exercise actual direction and control; or
- (b) which is deemed to be a subsidiary of the **Firm** by virtue of any applicable legislation or law.

Theft of Electronic Data means the unauthorised taking or misuse of information by a third party (other than an **Insured**) that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device which is intended to interact with a **Computer System**, including account information, confidential information, proprietary information and personal information while stored in a **Computer System** maintained by an **Insured** to reasonable security standards and back up procedures.

Training Company means a company through which a **Licensed Trainer** conducts the **Business** provided that:

- (a) that company is controlled by the **Licensed Trainer**; or
- (b) not less than a fifty percent (50%) shareholding in the company is held beneficially by the **Licensed Trainer** or by members of his/her immediate family, including a lawful spouse or domestic partner.

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.

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.

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.

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 and on request.

