

Professional Indemnity + Broadform Liability



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Combined Liability Package

Policy 1 – Professional Indemnity Insurance Policy

Policy 2 – Broadform (Public and Products) Liability Policy

Important Information

The way we handle your personal information

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims.

You can choose not to provide this information, however, we may not be able to process your requests.

We may disclose information we hold about you to other insurers, an insurance reference service or as required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisors.

If you wish to update or access the information we hold about you, please contact us.

General Insurance Code Of Practice

CGU Insurance proudly supports the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to promote better, more informed relations between insurers and their customers;
- to improve consumer confidence in the general insurance industry;
- to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from your nearest CGU office.

Our service commitment

CGU Insurance is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- one of our products;
- our service;
- the service of our authorised representatives, loss adjusters or investigators; or
- our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Brochures outlining our internal dispute resolution process are available from your nearest CGU Insurance office.

Intermediary remuneration

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary you should ask your intermediary.

Professional Indemnity Insurance – Policy 1

Section 1 How To Read This Insurance Policy

1.1 Words with special meanings

Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 13 of the **Policy** ('Words with special meanings'). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Schedule**.

1.2 Policy interpretation

Except where the context otherwise requires it:

- a) the singular includes the plural and the plural includes the singular.
- b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- c) words importing a gender include every other gender.

1.3 Paragraph headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

Section 2 The Insurance Contract

- 2.1 **We** agree to provide the **Cover** described in this **Policy** upon full payment of the gross premium as stated in the **Schedule**. If full payment of the gross premium as stated in the **Schedule** is not made, there is no **Cover**.
- 2.2 Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured**, in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms.
- 2.3 If any of that information is wrong or false, it may affect entitlement to **Cover** under this **Policy**.
- 2.4 This **Policy** is in force for the **Period of Insurance**.

Section 3 The Cover We Provide

The provisions of Section 3 apply to all Sections of this **Policy**, unless otherwise stated to the contrary.

3.1 The cover we provide

We Cover the **Insured** up to the **Policy Limit** (see Section 5) for any **Claim** for **Civil Liability** to any third party which is incurred in the provision of the **Professional Services** and which **Claims**:

- a) are made against the **Insured** during the **Period of Insurance**; and
- b) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and
- c) arise from an act, error or omission on or after the 'Retroactive Date' as stated in the **Schedule**.

3.2 Civil liability clarification

For the purpose of clarification only, the **Civil Liability We** provide **Cover** for in Section 3.1 includes (but is not limited to) the following types of **Civil Liability Claims**:

- a) breach of duty (including a fiduciary duty).
- b) breach of privacy or confidentiality.
- c) defamation.
- d) loss of or damage to **Documents** which were in the **Insured's** physical custody or control or for which the **Insured** is legally responsible for, at the time of loss or damage.
- e) subject to Section 8, vicarious liability of the **Policyholder** arising from the dishonest, fraudulent, criminal or malicious acts or omissions by any person otherwise the subject of **Cover** under this **Policy** (but there is no **Cover** to that person for these **Claims**).
- f) infringement of **Intellectual Property**.
- g) breaches of the misleading & deceptive conduct provisions of Part 2 Div 2 of the Australian Securities and Investments Commission Act 2001, the consumer protection provisions of the Competition and Consumer Act 2010 (Cwlth) and corresponding consumer protection provisions of New Zealand and Australian state and territories Fair Trading legislation and any antecedents to any of this legislation (but not for criminal liability in respect of any of these).
- h) breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the reasonable belief of the person alleged to have committed the breach that appropriate authority was held.

3.3 Claim investigation costs

- a) In respect of **Covered Claims**, subject to Sections 3.3 b) and 5.3, **We** also pay in addition to the **Policy Limit** (but only up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.

- b) In respect of **Covered Claims**:
- i. first brought in a court outside Australia or New Zealand; or
 - ii. brought in a court within Australia or New Zealand to enforce a judgment handed down in a court outside Australia or New Zealand; or
 - iii. where the proper law of a country other than Australia or New Zealand is applied to any of the issues in any **Claim** or **Covered Claim Covered** by this **Policy**,

the **Policy Limit** is inclusive of **Claim Investigation Costs**.

- c) **We** will pay **Claim Investigation Costs** as and when they are incurred prior to final resolution of the **Claim**, however, **We** will only pay such costs if either:
- i. **We** incur them; or
 - ii. the **Policyholder** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are reasonable and necessary.
- d) **We** are not obliged to defend, or to continue to defend, any **Claim** (or **Covered Claim**) or pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

3.4 Advancement of claims investigation costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all reasonable and necessary **Claims Investigation Costs** provided that:

- a) **We** have not already denied **Cover** under the **Policy**; and
- b) **Our** written consent is obtained prior to the **Policyholder** incurring such **Claims Investigation Costs** (such consent shall not be unreasonably withheld or delayed).

The **Insured** on whose behalf or for whose benefit **Claims Investigation Costs** were paid, shall repay to **Us** all such **Claim Investigation Costs**, in the event and to the extent that:

- i. the **Insured** makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct (within the meaning of the conduct set out in Section 6.11); or
- ii. it is subsequently established, directly or indirectly, by judgment or other final adjudication, that conduct of the type referred to in i. above occurred.

3.5 Enquiries cover

For those **Enquiries** of which the **Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**, **We Cover** the **Insured** (subject to the **Specific Cover Limit** set out in the **Schedule** for 'Enquiries') for the legal costs and expenses (incurred with **Our** prior written approval and which are reasonable and necessary) for the representation of the **Insured** at any **Enquiry**. This **Cover** does not extend to paying the **Insured's** regular or overtime wages, salaries or fees.

If no **Specific Cover Limit** is indicated in the **Schedule** for 'Enquiries', then no **Cover** is provided by this **Policy** for **Enquiries**.

3.6 Continuous cover

We Cover the **Insured**, for any **Claim** otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** (notwithstanding Section 6.1 of this **Policy**) if:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- b) **We** were the professional liability insurer of the **Policyholder** when the **Insured** first knew of such **Known Circumstance**; and
- c) **We** continued without interruption to be the **Policyholder's** professional liability insurer up until this **Policy** came into effect; and
- d) had **We** been notified of the **Known Circumstance** when the **Insured** first knew of it, the **Insured** would have been covered under the policy in force at that time but is not now entitled to be covered by that policy, and the **Insured** would (but for Section 6.1 of this **Policy**) otherwise be **Covered** under this **Policy**; and
- e) the **Known Circumstance** has not previously been notified to **Us** or to any other insurer.

If the **Insured** was entitled to have given notice of the **Known Circumstance** under any other policy of insurance with any other insurer, then this Section 3.6 does not apply to provide **Cover** under this **Policy**.

Our liability under this Section 3.6 is reduced to the extent of any prejudice **We** suffer as a result of any delayed notification of the **Known Circumstance** to **Us**.

The **Policy Limit** of the **Cover We** provide under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph d) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

3.7 Court attendance costs

For any person described in a) and b) below who is required to physically attend at Court for the purposes of giving evidence as a witness in connection with a **Claim** or **Covered Claim**, then it is agreed that **Claim Investigation Costs** will include the following payments, per day on which attendance at Court is required, payable to any:

- a) **Principal** or **Former Principal** - \$500
- b) **Employee** - \$250

No **Excess** shall apply to this Section 3.7.

3.8 Lost documents

a) Where **Cover** is not otherwise provided under Section 3.1 of the **Policy**, **We** shall pay the costs and expenses in replacing or restoring a third party's **Documents**:

- i. for which a **Policyholder** is legally responsible;
- ii. that have been **Lost** during the **Period of Insurance**; and

- iii. where the **Lost Documents** have been the subject of a diligent search by or on behalf of the **Policyholder**; and
 - iv. **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**.
- b) **We** will only pay such costs and expenses if either:
- i. **We** incur them; or
 - ii. the **Policyholder** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are reasonable and necessary.
- c) **We** shall not be liable for any such costs and expenses arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Policyholder's** control.
- d) The **Specific Cover Limit** for such costs and expenses under the **Policy** shall not exceed \$250,000 any one **Loss** and \$500,000 in the aggregate for all such **Losses**, which is included within and not in addition to the **Policy Limit**.
- e) For the purposes of this **Policy**, '**Lost**' shall mean **Documents** destroyed, damaged, lost, distorted, erased or mislaid as a result of one event solely in the provision of **Professional Services** and **Loss** shall have a corresponding meaning.
- f) Notwithstanding Item 7.2 of the **Schedule**, the **Excess** applicable to this Section 3.8 is \$1,000 for each **Loss**.

3.9 Compensatory civil penalties

- a) Notwithstanding Section 6.10, **We Cover Claims** for compensatory civil penalties arising from the provision of **Professional Services**. The **Specific Cover Limit** for the payment of compensatory civil penalties under the **Policy** shall not exceed \$250,000 in any one **Claim** and \$500,000 the aggregate for all such **Claims**, which is included within and not in addition to the **Policy Limit**.
- b) However, **We** will not be liable to provide **Cover** for any compensatory civil penalty:
- i. for which **We** are legally prohibited at law from **Covering** the **Insured**;
 - ii. based upon, attributable to or in consequence of any:
 1. wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
 2. gross negligence or recklessness; or
 3. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.
- c) Subject to Sections 3.3 and 5.3, **We** also pay in addition to the **Specific Cover Limit** specified in Section 3.9 a), **Claim Investigation Costs** (but only up to an amount equal to the **Specific Cover Limit**) which is included within and not in addition to the **Policy Limit**.

3.10 Run-off cover for the policyholder

In the event that a **Run-Off Event** occurs during the **Period of Insurance**, to the **Policyholder**:

- a) the **Cover** provided by this **Policy** with respect to such **Policyholder** shall continue until the expiry date of this **Policy** in respect of any **Claim** otherwise **Covered** by this **Policy** arising from any act, error or omission prior to the date of the **Run-Off Event**.
- b) the **Policyholder** may apply to extend the **Period of Insurance** for run-off cover subject to:
 - i. provision of a **Proposal**;
 - ii. **Our** written agreement, which agreement is at **Our** absolute discretion;
 - iii. the payment of any additional premium required by **Us** (to be paid in full immediately upon expiry of the **Period of Insurance** immediately preceding the **Run-Off Event**); and
 - iv. any additional terms, conditions or exclusions that **We** may impose;

then the **Period of Insurance** may be extended up to a maximum of 84 months, as may be determined by **Us**, provided that **Our** total liability under the **Policy** for all **Claims** and **Covered Claims** in the aggregate for the **Period of Insurance** and the extended period pursuant to this Section 3.10 b), shall not exceed the **Policy Limit**.

For the avoidance of doubt the **Period of Insurance** shall not be greater than 84 months from the original inception date of the **Policy**.

3.11 Public relations cover

- a) **We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by the **Policyholder** with **Our** prior written consent (which shall not be unreasonably withheld or delayed) to design and implement a **Publicity Campaign** approved by **Us**, to prevent or mitigate damage to the reputation of the **Policyholder** in consequence of a **Claim** or **Covered Claim** from the provision of **Professional Services**.
- b) The **Specific Cover Limit** for the payment of such fees, costs and expenses of a public relations consultant under the **Policy** shall not exceed \$50,000 for any one **Publicity Campaign**, \$100,000 in the aggregate for all **Publicity Campaigns**, which is included within and not in addition to the **Policy Limit**.
- c) Notwithstanding Item 7.2 of the **Schedule**, the **Excess** applicable to this Section 3.11 is \$1,000 for each and every **Publicity Campaign**.

3.12 Extended notification period

- a) In the event that this **Policy** is not renewed or is cancelled for any reason other than non payment of premium then the **Policyholder** has until such time that the **Policyholder** effects another insurance policy which covers substantially the same risk as this **Policy**, either with **Us** or any other insurer(s), or a period of thirty (30) days commencing on the day immediately following expiry/cancellation of this **Policy**, whichever is sooner, to notify **Us** of any **Claims** made against the **Insured** during the **Period of Insurance**;

- b) **Cover** under this Section 3.12:
- i. does not reinstate or increase the **Policy Limit** or extend the **Period of Insurance**.
 - ii. will only apply to acts, errors or omissions committed or alleged to have been committed by the **Insured** before the end of the **Period of Insurance** or the cancellation date of this **Policy** where this **Policy** has been cancelled; and
 - iii. is limited to **Claims** and **Covered Claims** arising from an act, error or omission which occurred on or after the 'Retroactive Date' specified in the **Schedule**.

Optional cover section

The following are optional **Covers** to this **Policy** only, and are subject to all other provisions of the **Policy** unless otherwise stated to the contrary.

3.13 Employment practices liability cover

Notwithstanding Section 6.9, **We Cover** the **Policyholder**, and each **Employee** (subject to Section 3.1 and the **Specific Cover Limit** set out in the **Schedule** for 'Employment Practices Liability' and the special provisions in Section 10 of this **Policy**), for **Claims** brought against the **Policyholder** and/or an **Employee** (including **Claims** brought by **Principals** or **Employees**, contract or temporary workers of the **Policyholder**) for **Loss** sustained by reason of:

- a) discrimination against any **Employee**, former **Employee** or applicant for employment because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- b) wrongful dismissal of any **Employee**;
- c) workplace harassment (whether sexual or otherwise) of an **Employee**;
- d) breach of an implied term of an oral or written employment contract;
- e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Employee**;
- f) wrongful refusal to employ a potential **Employee**;
- g) defamation arising from employment related matters;
- h) misleading misrepresentation or advertising as to the terms and conditions of employment;
- i) denial of natural justice to an **Employee** in respect of any issue concerning his or her employment.

If no **Specific Cover Limit** is indicated in the **Schedule** for 'Employment Practices Liability', then no **Cover** is provided by this **Policy** for 'Employment Practices Liability'.

3.14 Fidelity cover

- a) **We Cover** the **Policyholder** for any **Fidelity Loss** (see also Sections 8 and 9) where such **Fidelity Loss**:
 - i. is sustained by reason of any dishonest or fraudulent conduct of an **Employee**;
 - ii. is first discovered by the **Policyholder** during the **Period of Insurance**;
 - iii. **We** are told about in writing as soon as reasonably practicable during the **Period of Insurance**; and
 - iv. is caused by dishonest or fraudulent conduct committed by an **Employee** within a period of thirty six (36) months before being first discovered by the **Policyholder**;
 - b) The **Excess** applies to each and every **Fidelity Loss** resulting from each separate dishonest, fraudulent, malicious or illegal act or omission committed by an **Employee**;
 - c) The amount of the **Excess** for 'Fidelity Cover' is specified in the **Schedule** when **We** provide **Cover** for a **Fidelity Loss** which **We Cover** under Section 3.14 of this **Policy**. The **Policyholder** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for **Fidelity Losses** under Section 3.14.
 - d) The **Policyholder** shall give written notice, including affirmative proof of any **Fidelity Loss** with full particulars to **Us** of any **Fidelity Loss**, during the **Period of Insurance**. The **Policyholder** shall bear the costs and expenses of establishing the nature and extent of the **Fidelity Loss**. **We** will be under no obligation to provide **Cover** until **We** are satisfied that such **Fidelity Loss** has in fact been sustained.
 - e) **Cover** for **Fidelity Loss** is subject to the **Specific Cover Limit** set out in the **Schedule** for 'Fidelity Cover'. The **Specific Cover Limit** is inclusive of **Claims Investigation Costs**.
- If no **Specific Cover Limit** is indicated in the **Schedule** for 'Fidelity Cover', then no **Cover** is provided by this **Policy** for **Fidelity Losses**.

Section 4

Who Is Covered

4.1 Policyholder

We Cover the **Policyholder** for **Claims** and **Covered Claims** of the type and on the basis specified in Section 3.

4.2 Vicarious liability for agents or consultants

The provision of the **Professional Services** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants of the **Policyholder** in the provision of the **Professional Services** and for which the **Policyholder** is liable. Subject to the definition of **Employee** in Section 13.8, such agents and consultants, however, are not **Covered** by this **Policy**.

4.3 Other insureds

In addition, **We Cover** the following for **Claims** or **Covered Claims** of the type and on the basis specified in Section 3 of this **Policy**:

a) Employees

Employees of the **Policyholder** in respect of **Civil Liability** arising from the provision of the **Professional Services** but not in respect of **Claims** or **Covered Claims** under Section 3.2e) of this **Policy**.

b) Principal's previous business

- i. Notwithstanding Section 6.3e), **Principals** of the **Policyholder** in respect of **Civil Liability** arising in their capacity as a principal of a prior professional practice in respect of **Claims** arising from the provision on behalf of the prior professional practice of **Professional Services** of the type **Covered** under this **Policy**.
- ii. This **Cover** is only for a maximum of thirty days from the date the principal became a **Principal** of the **Policyholder** (or until the **Policy** expires if that is sooner).
- iii. **We** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the prior professional practice.
- iv. The Retroactive Date for such **Cover** is deemed to be without limitation of date.

c) Prior corporate entities

Corporate entities through which the **Policyholder** previously traded, in the course of the provision of the **Professional Services**.

Cover provided by this Section 4.3c), however, is subject to receipt by **Us**, at the time of any such **Claim**, of an express written request from the **Policyholder** to so extend the **Policy Cover**.

d) Merged and/or newly acquired subsidiaries

- i. Entities (practicing in the same professional discipline as the **Policyholder**) in respect of **Claims** arising from the provision of **Professional Services** of substantially the same type as those **Covered** by this **Policy**, which are merged with or acquired by the **Policyholder** while this **Policy** is in force.
- ii. This **Cover** is only for a maximum of thirty days from the date of the merger or acquisition (or until the **Policy** expires if that is sooner).
- iii. **We** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity.
- iv. The Retroactive Date for such **Cover** is deemed to be the date of the merger with or acquisition by the **Policyholder** unless **We** otherwise agree in writing.

e) Former subsidiaries run-off cover

Any former **Subsidiary** of the **Policyholder**, provided that such **Cover** shall only apply in respect of:

- i. **Claims** arising from the provision of **Professional Services**; and
- ii. only in respect of acts, errors or omissions which occurred after the 'Retroactive Date' specified in the **Schedule** and prior to the date on which such **Subsidiary** ceased to be a subsidiary of the **Policyholder**.

We only provide **Cover** to the persons, firms or incorporated bodies described in this Section 4.3 if the persons, firms or incorporated bodies claiming **Cover** each agree in writing within a reasonable time of notification to **Us** of the **Claim** or **Covered Claim**:

1. to be bound by this **Policy**; and
2. to be liable individually, and together with the **Policyholder**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

4.4 Cover to spouse, estates and legal representatives

If an **Insured** dies or becomes legally incompetent or insolvent, **We Cover** the spouse, estate, legal representative or assigns of the **Insured**, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise have been available to the **Insured**.

4.5 Joint venture

- a) If the name of a **Joint Venture** is included in the **Schedule**, under 'Joint Ventures', then **We Cover** the **Policyholder** for the **Policyholder's** liability in respect of that **Joint Venture** as otherwise **Covered** by this **Policy**.
- b) If the name of the **Joint Venture** is not included in the **Schedule** under 'Joint Ventures', then **We Cover** the **Insured** only for the acts, errors or omissions of the **Insured** arising from the provision of **Professional Services** as otherwise **Covered** by this **Policy**.

Section 5

Limits To The Amount Of Cover

5.1 The policy limit

The **Policy Limit** applies to any one **Claim** and, subject to this Section 5, applies to the total of all **Claims** and **Covered Claims**, **Covered** by this **Policy**.

5.2 Reinstatement of the policy limit

The **Policy Limit** is the maximum amount **We** will provide **Cover** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy**.

a) Limits on reinstatement

However:

- i. **We** do not provide **Cover** for an amount in the aggregate more than the **Policy Limit** or the **Specific Cover Limits** as applicable in respect of any one **Claim**;
- ii. the aggregate **Cover** under this **Policy** shall not exceed the **Policy Limit** or **Specific Cover Limit** as applicable for any one **Claim**, or **Claims** (including **Covered Claims**) arising from the one act, error or omission;
- iii. if there is extra insurance, held with another insurer in excess of the applicable limit of this **Policy**, then **Cover** in excess of one **Policy Limit** or **Specific Cover Limit** as applicable (up to a maximum of twice the **Policy Limit** or **Specific Cover Limit** as applicable) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance.

b) Limit of cover for claim investigation costs

Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are paid in respect of that **Claim** up to an amount equal to the **Policy Limit** in accordance with Section 3.3 of this **Policy**. The aggregate amount **We** pay in total for **Claim Investigation Costs** for or in respect of all **Claims Covered** by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

5.3 Cover for claim investigation costs if the policy limit is exceeded

If the amount that has to be paid to dispose of, settle or finalise a **Claim** exceeds the **Policy Limit**, then **We** only pay for the same proportion of the **Claim Investigation Costs** as the **Policy Limit** bears to the amount to be paid to dispose of, settle or finalise the **Claim**. But **We** never pay more than the **Policy Limit**.

5.4 Limit if multiple persons and/or entities are covered

The **Policy Limit** does not increase if there is more than one **Insured Covered** under this **Policy**, or if more than one **Insured** causes or contributes to the **Claim**.

5.5 Specific cover limits

If the **Schedule** or Section 3 of the **Policy** indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then the applicable **Specific Cover Limits** and not the **Policy Limit** applies. The **Specific Cover Limits** are included within, and not in addition to, the **Policy Limit**.

5.6 GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be deemed to be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that the **Policyholder** is entitled to claim an Input Tax Credit for a payment required to be made by the **Policyholder** as an **Excess**, then the amount of the **Excess** shall be net of the entitlement of the **Policyholder** to the Input Tax Credit.
- c) Where payment is made 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 the **Policyholder** is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made 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 the **Policyholder** 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.

Section 6

What Is Not Covered

We do not provide **Cover** for any of the following **Claims** or **Covered Claims**:

6.1 Known claims and known circumstances

- a) known at the inception date of this **Policy**; or
- b) arising from, directly or indirectly based upon, attributable to, or in consequence of any **Known Circumstance** or known **Claims** or **Covered Claims**; or
- c) disclosed in the **Proposal** or arising from facts or circumstances which may give rise to a **Claim** or **Covered Claim** disclosed in the **Proposal**; or
- d) if this **Policy** is endorsed or amended mid term, for any **Claim** or **Covered Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

6.2 Foreign jurisdictions

subject to the 'Jurisdictional Limits' specified in the **Schedule**

- a) first brought in or determined pursuant to the laws of, the United States of America or the Dominion of Canada, or their territories or protectorates; or
- b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
- c) where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim**, **Covered** by this **Policy**.

6.3 Assumed duty or obligation

arising from or in connection with:

- a) a liability under a contractual warranty, guarantee or undertaking (unless such liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) circumstances where a right of contribution or indemnity has been given up by an **Insured**, but only to the extent of the prejudice suffered by **Us** in those circumstances; or
- c) circumstances where someone has done work or provided services under an arrangement or agreement with an **Insured** which limits any potential right for an **Insured** to receive contribution or indemnity from that person, but only to the extent **We** are prejudiced in those circumstances; or

- d) any **Civil Liability** which an **Insured** agrees to accept in connection with the provision of the **Professional Services** which is more onerous than that which the **Insured** would otherwise have at common law; but only to the extent of the prejudice **We** suffer because of that agreement; or
- e) any business not conducted for or on behalf of the **Policyholder** firm or incorporated body.

6.4 Related parties

against an **Insured** brought by or on behalf of:

- a) any other **Insured**; or
- b) any company in respect of which any **Insured** holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
- c) any trust in respect of which any **Insured** is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- d) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the **Policyholder**.

6.5 Refund of Professional fees and trading debts

- a) for (or calculated by reference to) the refund of or waiver of any obligation to pay professional fees or charges (by way of damages, offset or otherwise); or
- b) for the costs and expenses incurred by or on behalf of an **Insured** in complying with any contractual obligations or making good any faulty product; or
- c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) arising from a liability to pay trading debts or the repayment of any loan.

6.6 Profit

for any component of profit derived or derivable by an **Insured**.

6.7 Insolvency

directly or indirectly arising out of or in any way connected with an **Insured's** insolvency, bankruptcy or liquidation.

6.8 Goods and workmanship

directly or indirectly arising from:

- a) the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by or on behalf of an **Insured**;
- b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by or on behalf of an **Insured**, or from supervision of such workmanship by an **Insured**.

6.9 Employers' liability, directors' and officers' liability, occupiers' liability, motor, marine

- a) directly or indirectly based upon, attributable to or in consequence of the **Policyholder's** liability as an employer; or
- b) arising from bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under the direction, control and/or supervision of the **Insured** or for whose workplace safety the **Insured** is responsible;
- c) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant; or
- d) if an **Insured** is either an incorporated body or a director or officer of an incorporated body, arising from any act, error or omission of a director or officer of that incorporated body while acting in that capacity; or
- e) arising from ownership or occupation (or alleged occupation) of land or buildings by an **Insured**; or
- f) arising from or in respect of the ownership, control over, operation or use of any aircraft, marine craft or motor vehicles of any kind.

6.10 Punitive and exemplary damages

for punitive, aggravated or exemplary damages or for fines or penalties. In addition, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims** or **Covered Claims**.

6.11 Intentional damage

subject to Section 3.2e) arising from:

- a) acts, errors, omissions by an **Insured**, with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences; or
- b) any wilful breach of any statute, contract or duty by a **Policyholder**.

6.12 Deregistration

in so far as an **Insured** is required by law to maintain a statutory registration in order to be entitled to practice or provide the **Professional Services**, **Claims** or **Covered Claims** arising from acts, errors or omissions by or on behalf of the **Insured** which occurred at a time when such registration was not held, was cancelled or suspended or was otherwise not current and valid.

6.13 Asbestos

which would not have arisen but for the existence of asbestos.

6.14 Radioactivity and nuclear hazards

arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

6.15 War and uprisings

arising directly or indirectly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

6.16 Terrorism

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

6.17 Pollution

arising directly or indirectly from the **Insured** or anyone on behalf of or at the direction of the **Insured** discharging, dispersing, releasing or permitting **Pollutants** to escape into or upon land, the atmosphere, or any water course or body of water (**Pollution**); however this exclusion will not apply if the **Pollution** results from an error or omission in design and/or advice and/or specification in the provision of the **Professional Services**.

Section 7

Investigation, Defence And Settlement Of Claims

7.1 We must be told about claims

The **Policyholder** must tell **Us** in writing about a **Claim** as soon as possible during the **Period of Insurance**. If this is not done an **Insured's** right to **Cover** under this **Policy** may be affected.

7.2 Claims co-operation

Each **Insured** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen an **Insured's** liability in relation to a **Claim** (or **Covered Claim**) **Covered** by this **Policy**;
- b) immediately give **Us** all the help and information that **We** reasonably require to:
 - i. investigate and defend a **Claim** or **Covered Claim**; and
 - ii. determine **Our** liability under this **Policy**.

7.3 We can protect our position

When **We** receive a notification of a **Claim** or **Covered Claim**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

7.4 Disclosure of information to us in respect of cover

The solicitors instructed by **Us** to act on behalf of the **Insured** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information they receive in that capacity, wherever they obtain it from. By claiming under this **Policy**, the **Insured** authorises such solicitors to disclose this information to **Us** and waives all claim to legal professional privilege which might otherwise prevent those solicitors from disclosing this information to **Us**.

7.5 We can manage the claim (or covered claim)

We can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in the **Insured's** name; or
- b) where **We** have confirmed **Cover** and the **Policyholder** so requests, **We** have the duty, to conduct the defence of or settlement of any **Claim** in the **Insured's** name; and
- c) claim in the **Insured's** name, any right any **Insured** may have for contribution or indemnity.

7.6 An Insured must not admit liability for or settle any claim (or covered claim)

An **Insured** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any costs or expenses for a **Claim** (or **Covered Claim**) without first obtaining **Our** consent in writing. If **Our** prior consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

7.7 Policyholder's right to contest

If the **Policyholder** elects not to consent to a settlement that **We** recommend and wants to contest or continue the dispute or legal proceedings, then **We** only provide **Cover** (subject to the **Policy Limit**) for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess**; plus
- c) the **Claim Investigation Costs** calculated to the date the **Policyholder** elected not to consent to the settlement.

7.8 Senior counsel

- a) Unless a Senior Counsel, that **We** and the **Policyholder** both agree to instruct, advises that the **Claim** or **Covered Claim** should be contested, then neither **We** nor the **Policyholder** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.
- b) in formulating his or her advice, Senior Counsel must be instructed to consider:
 - i. the economics of the matter, having regard to but not limited to, the:
 1. the damages and costs likely to be recovered; and
 2. the likely costs of defence; and
 - ii. the **Insured's** prospects of successfully defending the **Claim** or **Covered Claim**.
- c) the cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.
- d) if Senior Counsel advises that the matter should or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then the **Insured**:
 - i. cannot (subject to Section 7.7) object to the settlement; and
 - ii. must immediately pay the relevant **Excess**.

7.9 Payments to settle potential claims

Any money **We** pay to settle anything which might give rise to a **Claim** (or **Covered Claim**), is taken to be:

- a) a payment to settle a **Claim** (or **Covered Claim**); and
- b) a payment for the purpose of calculating the total of all **Claims** (or **Covered Claims**) under this **Policy**.

7.10 Recovering money from employees

We must not recover any amount paid out in respect of a **Claim** or **Covered Claim** under this **Policy** from any **Employee** unless the **Claim** (or **Covered Claim**) arose from dishonest, fraudulent, criminal or malicious acts or omissions of the **Employee**.

7.11 Offsetting of costs and expenses

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Policyholder** must pay whatever amount is above that liability immediately **We** ask for it.

We can offset that payment due from the **Policyholder** against (and deduct that amount from) any amount **We** must pay to or on behalf of the **Policyholder** under this **Policy**.

7.12 The excess

- a) **We** only provide **Cover** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess**.
- b) There are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved which the **Insured** must pay. The amount of the **Excess** for:
 - i. Australia and New Zealand jurisdictions specified in the **Schedule** if the **Covered Claim** arises under the jurisdiction of an Australian or New Zealand court. The **Insured** must also pay this **Excess** when **We** provide **Cover** for the **Claim Investigation Costs** of this **Covered Claim** if the **Schedule** states 'Costs inclusive'. There is no **Excess** for **Claim Investigation Costs** when **We Cover** an **Insured** for this **Covered Claim** if the **Schedule** states 'Costs exclusive'.
 - ii. 'Other Jurisdictions' specified in the **Schedule** if the **Covered Claim** arises under the jurisdiction of a court other than of Australia or New Zealand. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for the **Covered Claim**.
 - iii. 'Enquiries' specified in the **Schedule** when **We** provide **Cover** for legal costs and expenses associated with an **Enquiry** which **We Cover** under Section 3.5 of this **Policy**.
 - iv. 'Employment Practices Liability' specified in the **Schedule** when **We** provide **Cover** for an Employment Practices Liability **Claim** which **We Cover** under Section 3.13 of this **Policy**. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for this **Covered Claim** under Section 3.13 of this **Policy**.
- c) The **Insured** must pay only one **Excess** for all **Covered Claims** or losses **Covered** by this **Policy** arising from the one act, error or omission.
- d) In the event of a **Claim** or **Covered Claim** arising from separate acts, errors or omissions, then only one **Excess** shall apply in respect of such **Claim** or **Covered Claim**.
- e) Where the **Excess** is indicated in the **Policy** as 'Costs inclusive', the amount of the **Excess** is exclusive (i.e. net) of any GST payable in respect of **Claims Investigation Costs** or similar investigation or defence costs.

7.13 Loss prevention

The **Insured** shall, as a condition to **Cover** under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Claim** or **Covered Claim** which may be **Covered** under this **Policy**.

7.14 Other Insurance which may cover the risk

The **Policyholder** must immediately advise **Us** in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, **Covered** by this **Policy**.

7.15 Material change in the risk

The **Policyholder** must immediately advise **Us** in writing if any of the following occurs during the **Period of Insurance**:

- a) undertaking activities that are materially different from the **Professional Services**;
- b) any cancellation or suspension, or loss of or condition imposed, upon any licence, registration or other authority required by the **Insured** to conduct the **Professional Services**; or
- c) the **Insured** being insolvent, bankrupt or in liquidation; or
- d) a **Run-Off Event**.

Section 8

Special Provisions For Dishonesty And Fraud Or Fidelity

- 8.1** When the **Claim** under Section 3.2e), involves theft or misappropriation of money, then **We** only provide **Cover** if:
- the **Policyholder** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
 - all cheques and/or payments prepared on that trust account are required to be signed by a **Principal** or two authorised people;
 - all electronic fund transfers are required to be authorised by two authorised people.
- 8.2** The **Policyholder** must take all reasonable precautions to prevent any loss and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen a **Claim Covered** by Section 3.2e) or a **Fidelity Loss Covered** under Section 3.14.
- 8.3** **We** deduct from any money **We** pay for a **Claim** or loss under Section 3.2e) or **Fidelity Loss** under Section 3.14:
- the amount of any money which the **Policyholder** would have paid to the fraudulent, dishonest, criminal or malicious person otherwise the subject of **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
 - the amount of any money of, or to which the person referred to in paragraph a) above is entitled, which the **Policyholder** holds (if **We** can do so by law).
- 8.4** Notwithstanding Section 3.2e), and Section 3.14 there is no **Cover** under this **Policy** to any **Insured** for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which:
- the **Policyholder** had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions; and
 - failed to take any reasonable action to prevent.

Section 9

Additional Special Provisions For Fidelity Cover

In relation to Section 3.14 only:

- 9.1** **We** do not **Cover** any:
- Fidelity Loss** sustained outside of Australia or New Zealand or any loss arising directly or indirectly from any loss sustained outside of Australia or New Zealand.
 - Fidelity Loss** the existence of which has only been established by profit and loss figures or by inventory calculations (including stock takes).
 - costs incurred by the **Policyholder** in re-writing, amending or re-installing the **Policyholder's** computer programs or systems.
 - consequential loss arising from any dishonest or fraudulent acts or omissions of any **Employee**.
 - Fidelity Loss** caused by or contributed to by an **Employee** who was not employed by the **Policyholder** when the act or omission which caused or contributed to the loss occurred.
 - Fidelity Loss** caused by or contributed to by **Principals** or **Former Principals**.
 - loss arising from default under a loan or any type of credit offered to or by the **Policyholder**.
 - Fidelity Loss** arising directly or indirectly from any dishonest or fraudulent acts or omissions which the **Policyholder** knew, or ought reasonably to have known of, or suspected or ought reasonably to have suspected at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent.
 - Fidelity Loss** incurred by or on behalf of the **Policyholder** in respect of which the **Policyholder** committed or condoned any such dishonest, fraudulent, criminal or malicious acts or omissions.
 - Fidelity Loss** first discovered prior to the commencement of the **Period of Insurance** or first discovered after the expiration of the **Period of Insurance**.
 - Fidelity Loss** arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission by any shareholder who at the time of committing such acts had direct or indirect ownership of or control over 5% or more of the voting share capital of the **Policyholder**.
 - Fidelity Loss** arising directly or indirectly from the voluntary giving or surrendering of money, negotiable instruments, bearer bonds or coupons, stamps bank or currency notes unless such loss is sustained by reason of any dishonest or fraudulent act or omission of any **Employee**.

- m) loss arising directly or indirectly from the dissemination of or accessing any confidential information including but not limited to patents, trademarks, copyrights, trade secrets, computer programs, or customer information.
- n) loss arising directly or indirectly from any kidnap, ransom or extortion.

9.2 For the purposes of this **Policy**, '**Fidelity Loss**':

- a) means direct financial loss suffered by the **Policyholder** caused by the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or other property owned by the **Policyholder**;
- b) does not include wages, salaries, or other remuneration benefits or entitlements of an **Insured**.

Section 10

Special Provisions For Employment Practices Liability Cover

In relation to Section 3.13 only:

10.1 Loss

'**Loss**' means the amount payable in respect of a **Claim** made against the **Policyholder** and any of its **Employees** and shall include damages, judgments, settlements, interest, costs, defence costs and back pay where reinstatement by a court or tribunal is ordered.

Loss excludes any amount which the **Policyholder** is or was required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, or pursuant to statute, award or otherwise.

10.2 Claim

'**Claim**' means the receipt by the **Policyholder** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against and served on the **Policyholder**; or
- b) any written demand from a third party claiming compensation against an **Insured**.

10.3 Special exclusions

We do not **Cover** any of the following **Claims** (or losses or liabilities) or legal proceedings or any associated costs:

- a) **Strikes, lock-outs etc.**
brought about by, contributed to by, or which involve acts committed during or in connection with any industrial dispute (whether between employer and **Employee** or between **Employees** or their unions or generally), strike, picket, lock-out, go slow or work to rule action;

b) **Insolvency**

brought after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, or trustee administering a compromise or scheme of arrangement of the **Policyholder** but this Exclusion is not to apply to **Claims** notified prior to the appointment;

c) **Workers Compensation/Occupational Health and Safety Legislation**

brought about by, contributed to by or which involve claims arising under, or pursuant to, or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation;

d) **Bodily injury**

arising from or which involves bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person;

e) **Physical modifications to premises**

for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Policyholder**;

f) **Unfair contract claims**

- i. for or in respect of a contract of employment alleged to be unfair; or
- ii. the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.

Section 11

Other Matters

11.1 The Proposal: Non-imputation

- a) The **Proposal We** were given by or on behalf of the **Insured** before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person or entity **Covered** under this **Policy**.
- b) If there is any fact or misstatement in the **Proposal** that relates to one natural person who is an **Insured**, **We** do not attribute it to any other natural person who is an **Insured**, for the purposes of this **Policy**.

11.2 Authority to accept notices and to give instructions

The persons listed as the **Policyholder** in the **Schedule** are appointed individually and jointly as agent of each **Insured** in all matters relating to this **Policy**, and to **Claims** or **Covered Claims**, **Covered** by the **Policy**.

In particular (but without limitation) the **Policyholders** are agents for the following purposes:

- a) to give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- b) to accept endorsements or other notices provided for in this **Policy**; and
- c) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- d) to consent to any settlement **We** recommend; and
- e) to do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claims**; and
- f) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

11.3 Allocation

- a) To the extent that a **Claim** comprises **Covered Matters** and **Uncovered Matters**, **We** and the **Policyholder** will use best endeavours to agree a fair allocation between **Covered Matters** and **Uncovered Matters** having regard to the relative legal and financial exposure attributable to the **Covered Matters** and **Uncovered Matters**.
- b) This allocation will apply to **Claim Investigation Costs**.
- c) Any dispute between **Us** and the **Policyholder** on the allocation will be resolved by a Senior Counsel that **We** and the **Policyholder** both agree to instruct or in the absence of agreement, as appointed by the President of the Bar Association in the state or territory of the first address of the **Policyholder** shown on the **Policy Schedule** or if no address is shown there, as shown on the **Proposal**.
- d) Any allocation determined by Senior Counsel will apply retrospectively to the **Claim Investigation Costs** paid by **Us** or the **Policyholder** notwithstanding any prior payment on a different basis.

- e) The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.
- f) Any allocation between **Covered Matters** and **Uncovered Matters** as determined or ascertainable from a settlement or judgment in relation to the **Claim** will apply retrospectively to **Claim Investigation Costs** paid by either party notwithstanding any prior payment on a different basis, unless otherwise agreed.

11.4 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

11.5 Law of the policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

11.6 Territory covered by this policy

Cover under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our Cover** is restricted to **Claims** brought under the legal jurisdiction of the courts of Australia and New Zealand (or any country specified in the **Schedule**, under the heading 'Jurisdictional Limits').

11.7 Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** signed by one of **Our** officers.

Section 12

Cancelling The Policy

12.1 The policyholder can cancel the policy

The **Policyholder** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms: **We** will be entitled to retain premium for pro-rata 'time on risk' subject to a minimum administration charge of \$250 plus applicable statutory charges.

12.2 We can cancel the policy

- a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to the **Policyholder** of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to the **Policyholder** personally, or post it by certified mail (to the **Policyholder's** broker or to the address the **Policyholder** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Policyholder** received the notice.

12.3 Refund of premium

After cancellation pursuant to Section 12.2, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless an **Insured** has made a fraudulent claim under the **Policy**.

Section 13

Words With Special Meanings

13.1 Words in bold type and capital letters

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Schedule**.

13.2 Civil liability

The compensatory damages, costs and expenses in respect of a **Claim** which:

- a) include the legal costs of the person making the **Claim**, for which an **Insured** becomes liable; but
- b) do not include any criminal liabilities or penalties.

13.3 Claim

The receipt by an **Insured** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against an **Insured**; or
- b) any written or verbal demand from a third party claiming compensation against an **Insured**.

13.4 Claim Investigation costs

The legal costs and expenses (including any expert costs where the choice of expert has been approved by **Us**) of investigating, defending or settling any:

- a) **Claim** or **Covered Claim**; or
- b) originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice or written or verbal demand from a third party claiming declaratory and/or other equitable relief against an **Insured** arising from the provision of the **Professional Services**.

13.5 Cover

Indemnity and indemnity shall not include any component of profit.

13.6 Covered claim

The:

- a) **Claims**, liabilities, losses, costs, matters otherwise the subject of **Cover** under the **Policy**; or
- b) circumstances which may give rise to any of the matters set out in 13.6 a)

which **We** may agree to **Cover** under this **Policy**.

13.7 Covered matters

That part of a **Claim**, liabilities, losses and/or costs made against or sought from the **Insured** for which **We** provide **Cover**.

13.8 Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system.

13.9 Employee

A natural person who is not a **Principal**, but who is or was, at the time the relevant act, error or omission giving rise to the **Claim** occurred, a person who:

- a) had entered into a contract of service with the **Policyholder** firm or incorporated body and is or was remunerated by the **Policyholder** for that service; or
- b) is neither a party to a contract of service with the **Policyholder**, nor an independent contractor, but a party to a contract for service with the **Policyholder** for the provision of services to or on behalf of the **Policyholder** for reward; or
- c) a volunteer worker or student

and in respect of a), b) and c) above is under the **Policyholder's** direction, control and supervision in the provision of **Professional Services**.

13.10 Enquiry

Any legal or quasi legal enquiry including coronial enquiries (into a matter arising directly out of the provision of **Professional Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) by a body conducting the enquiry (including a regulatory, licensing or statutory body) which has jurisdiction over the **Insured** (either by reason of a statutory power or by reason of the **Insured's** membership of a professional association which has the power to discipline its members).

13.11 Excess

The part the **Insured** must pay of each **Covered Claim**. It is described in more detail in Section 7.12.

13.12 Former principal

A person who has been, but is no longer:

- a) **Principal** of a **Policyholder**; or
- b) the **Principal** of any corporate entities through which the **Policyholder** previously traded, in the course of the provision of the **Professional Services**.

13.13 Insured

Each of the following, individually and jointly:

- a) the **Policyholder**;
- b) each person, firm or incorporated body identified in Sections 4.3 and 4.4 of the **Policy**.

13.14 Intellectual property

Copyright, design, patent, trade mark or moral right, including false attribution of authorship (under the Copyright Act 1968 Cwlth).

13.15 Joint venture

An undertaking (regardless of what it is called) which the **Policyholder** carries on together with someone else who is not otherwise **Covered** under this **Policy**.

13.16 Known circumstance

Any fact, situation or circumstance which:

- a) an **Insured** was aware of at any time before the **Period of Insurance** or before this **Policy** was amended/endorsed; or
- b) a reasonable person in the **Insured's** professional position would have thought, at any time before the **Period of Insurance** or before this **Policy** was amended/endorsed,

might result in someone making an allegation against an **Insured** in respect of a liability, loss or costs, that might be **Covered** by this **Policy** or the amendment/endorsement to this **Policy**.

13.17 Period of insurance

The 'Period of Insurance' stated in the **Schedule**.

13.18 Policy

The insurance **Policy** made up of:

- a) this **Policy** document;
- b) the **Schedule**; and
- c) the endorsements, if any, contained in the **Schedule**.

13.19 Policy limit

The limit stated in the **Schedule** as the 'Total Sum Insured'. See also Section 5 of this **Policy**.

13.20 Policyholder

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the **Schedule** as 'The Policyholder' and each **Principal** or **Former Principal** of any such firm or incorporated body; and
- b) any entity which is engaged in the provision of **Professional Services** and which is created and controlled, during the **Period of Insurance**, by anyone identified in the **Schedule** as 'The Policyholder'; and
- c) anyone who becomes a **Principal** of the 'The Policyholder' identified in the **Schedule**, during the **Period of Insurance** (but only in respect of work undertaken for or on behalf of 'The Policyholder' identified in the **Schedule**).

13.21 Pollutants

Any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

13.22 Principal

A sole practitioner, a partner of a firm, or a director of a company, which practitioner, firm or company is **Covered** by this **Policy**.

13.23 Professional services

The provision by or on behalf of the **Policyholder** of the 'Professional Services' stated in the **Schedule**.

13.24 Proposal

The written or electronic **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

13.25 Publicity campaign

A publicity and/or public relations campaign or campaigns designed and implemented by a public relations consultant.

13.26 Run-Off event

A **Policyholder** ceasing to exist or operate, or is consolidated with, merged into or acquired by another entity.

13.27 Schedule

The **Schedule** to this **Policy** signed by one of **Our** officers.

13.28 Specific cover

The **Cover** outlined in Section 3 of this **Policy**.

13.29 Specific cover limits

The limit of **Our** insurance **Cover** for each of the matters listed in the **Schedule** under 'Specific Cover Limits' or in Section 3 of this **Policy**.

13.30 Subsidiary

Any company or other incorporated entity which at the commencement of the **Period of Insurance** by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the **Schedule** as 'The Policyholder'.

13.31 Terrorism

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.

13.32 Uncovered matters

That part of a **Claim**, liabilities, losses and/or costs made against or sought from the **Insured** for which **We** do not provide **Cover**.

13.33 We or us or our

CGU Professional Risks, CGU Insurance Limited
ABN 27 004 478 371.

Broadform (Public And Products) Liability Insurance – Policy 2

Section 1 How To Read This Insurance Policy

1.1 Words with special meanings

Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 8 of the **Policy** (“Words with special meanings”). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy Schedule**.

1.2 Policy interpretation

Except where the context otherwise requires it:

- a) the singular includes the plural and the plural includes the singular.
- b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- c) words importing a gender include every other gender.

1.3 Paragraph headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

Section 2 The Insurance Contract

- 2.1 **We** agree to provide the cover described in this **Policy** upon full payment of the gross premium as stated in the **Policy Schedule**. If full payment of the gross premium as stated in the **Schedule** is not made, there is no cover.
- 2.2 Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured** in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms.
- 2.3 If any of that information is wrong or false, it may affect entitlement to cover under this **Policy**.
- 2.4 This **Policy** is in force for the **Period of Insurance**.

Section 3 The Cover We Provide

3.1 The cover We provide

Having paid the gross premium stated in the **Schedule** and subject to the terms conditions and exclusions contained in or endorsed on this **Policy**, **We** will pay to or on behalf of the **Insured** all sums provided by the **Policy** which the **Insured** shall become legally liable to pay as compensation for **Personal Injury, Property Damage** or **Advertising Liability** occurring within the Geographical Limits as stated within Section 5.1 of the **Policy** during the **Period of Insurance** caused by an **Occurrence** happening in connection with the **Business** of the **Insured**.

3.2 Limit of Liability

Our liability in respect of any one **Occurrence** shall not exceed the **Policy Limit** stated in the **Schedule** for **Public Liability, Products Liability** and **Advertising Liability**. All **Personal Injury, Property Damage** and **Advertising Liability** arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one **Occurrence**.

Our total aggregate limit during any one **Period of Insurance** for all claims arising out of **Products Liability** and **Advertising Liability** shall not exceed the **Policy Limit**.

Provided that the **Policy Limit** in respect of **Occurrences** in the United States of America or Canada or their protectorates or territories will be inclusive of Section 4 Supplementary Payments and will apply in the aggregate to all claims in any one **Period of Insurance**.

Section 4

Supplementary Payments

- 4.1** With respect to the indemnity provided by this policy **We** will:
- a) Defend, in the **Insured's** name and on the **Insured's** behalf, any claim or suit against the **Insured** alleging such **Personal Injury, Property Damage** or **Advertising Liability** and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent and may investigate, negotiate and settle any claim or suit as is deemed expedient;
 - b) Pay all charges, expenses and legal costs recoverable from or awarded against the **Insured** in any such claim or suit and all interest accruing on **Our** portion of any judgment until **We** have paid, tendered or deposited in court that part of such judgment that does not exceed the **Policy Limit**;
 - c) Pay reasonable expenses, other than loss of earnings, incurred by the **Insured**, at **Our** request in assisting **Us** in the investigation or defence of any claim or legal action;
 - d) Pay expenses (other than any medical expenses, which **We** are prevented from paying by law) incurred by the **Insured** for first aid rendered to others at the time of an **Occurrence** for **Personal Injury**;
 - e) Pay the legal costs incurred by the **Insured** with **Our** consent for representing the **Insured** at any coronial inquest or inquiry or any court of summary jurisdiction;
 - f) Pay reasonable expenses incurred by the **Insured** for temporary repairs, shoring up or protection of property of others which has been damaged as a result of an **Occurrence** which may be the subject of indemnity under this **Policy**.

4.2 **We** will do this provided that:

- a) **We** will not be obliged to pay any claim or judgement or to defend any suit after the **Policy Limit** has been exhausted by payment of judgements or settlements;
- b) If a payment exceeding the **Policy Limit** has to be made to dispose of a claim, **Our** liability to pay any costs, expenses and interest under Sections 4.1a) to e) above will be limited to that proportion of those costs, expenses and interest as the **Policy Limit** bears to the amount paid to dispose of the claim.

Section 5

Geographical Limits

- 5.1** This **Policy** applies in respect of **Occurrences** anywhere in the world but does not apply to or insure any liability or claims arising from or in respect of:
- a) the **Business** carried on by the **Insured** at or from any premises situated outside Australia or New Zealand, or
 - b) any contract entered into by the **Insured** under the terms of which work is to be performed outside Australia or New Zealand, or
 - c) any exports by the **Insured**, it's agents or servants to the United States of America or Canada.

Section 6

What Is Not Covered

We shall not be liable to indemnify the **Insured** in respect of:

6.1 Employer's Liability

- a) Liability for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in the **Insured's** service, or through the breach of any duty owed to that person, where the **Insured**:
 - i. is indemnified or entitled to be indemnified (either in whole or in part) in respect for claims for damages under a policy of insurance (which expression includes arrangements made by the **Insured** to provide accident insurance for the **Insured's** workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
 - ii. would have been indemnified or entitled to be indemnified had the **Insured** arranged a policy of insurance as required by such legislation.
- b) Liability for **Personal Injury** to any person arising out of, or sustained in the course of, the employment of such person in the **Insured's** service in Western Australia, other than a person of whom the **Insured** is deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA);
- c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to the **Insured**;
- d) Liability for **Personal Injury** arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in the **Insured's** service or while employed by the **Insured**;
- e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current **Period of Insurance**; and
- f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

This exclusion does not apply to the liability of others assumed by the **Insured** under a written contract where the contractual liability has been notified and specifically accepted by **Us**.

6.2 Motor Vehicles

Liability to pay compensation for **Personal Injury** or **Property Damage** arising out of the ownership,

possession, operation or use by the **Insured** of any **Vehicle**:

- a) Which is registered or which is required under any legislation to be registered; or
- b) In respect of which compulsory liability or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected); and
- c) Provided that Sections 6.2 a) and b) above do not apply to **Personal Injury** where:
 - i. That compulsory liability insurance or statutory indemnity does not provide indemnity;
 - ii. The reasons or reasons why that compulsory liability or statutory indemnity does not provide indemnity does not involve a breach by the **Insured** of legislation relating to vehicles; and
 - iii. **Vehicles** whilst being operated or used by the **Insured** as a **Tool of Trade**.

6.3 Aircraft and Watercraft

Liability to pay compensation for **Personal Injury** or **Property Damage** arising from the ownership, possession, operation, use or legal control by the **Insured** of:

- a) any **Aircraft**; or
- b) any **Watercraft** or vessel exceeding eight (8) metres in length.

6.4 Property in Physical or Legal Control

Liability to pay compensation for **Property Damage** to:

- a) property owned by or leased or rented to the **Insured**; or
- b) property in the physical or legal control of the **Insured**.
- c) Provided that Sections 6.4 a) and b) above shall not apply to liability for **Property Damage** to:
 - i. personal property of any director, executive officer, employee, partner or visitor of the **Insured**;
 - ii. premises (including landlord's fixtures, fittings and contents) which are leased or rented by the **Insured** for the purpose of the **Insured's Business**;
 - iii. premises (including landlord's fixtures, fittings and contents) temporarily occupied by the **Insured** for the purposes of carrying out work in connection with the **Business**;
 - iv. vehicles (not belonging to or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such property damage occurs whilst any such vehicle is in a car park owned or operated by the **Insured** provided that the **Insured** does not operate the car park for reward;
 - v. any property temporarily in the **Insured's** physical or legal control provided no indemnity is granted for damage to that part of any property upon which the **Insured** is or has been working on and **Our** liability under this clause does not exceed \$100,000 (or any other amount if specified in the **Schedule**) for any one **Occurrence**.

- d) Notwithstanding Sections 6.4 a) to c) above, no cover is provided under this **Policy** in respect to liability assumed by the **Insured** under any contract or agreement which requires the **Insured** to effect material damage insurance on premises, property or goods which the **Insured** does not own.

6.5 Faulty Workmanship

Any liability for the cost of performing, completing, correcting or improving any work done or undertaken by the **Insured**.

6.6 Damage to Insured's Products

Liability to pay compensation for:

- a) physical injury to or destruction or loss of the **Insured's Products** or any part of those **Products** arising out of them or any part of them;
- b) loss of use of any tangible property caused by physical injury to or destruction or loss of the **Insured's Products** or any part of those **Products** arising out of them or any part of them.

This exclusion does not apply to those **Products** repaired, serviced or treated by the **Insured** after such **Products** were originally sold, supplied or distributed by the **Insured**.

6.7 Product Recall and Repair

Liability to pay compensation for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of the **Insured's Products**.

6.8 Aircraft Products

Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with the **Insured's** knowledge in **Aircraft** or any aerial device.

6.9 Contractual Liability

Liability to pay compensation for **Personal Injury** or **Property Damage** where the liability has been assumed solely under an agreement unless such liability:

- a) would have attached in the absence of such agreement; or
- b) is specifically allowed by **Our** written endorsement; or
- c) is assumed by the **Insured** under a warranty of fitness or quality, or is implied by law, in respect of the **Insured's Products**.

6.10 Professional Liability

Liability to pay compensation for the rendering of or failure to render professional advice or service by the **Insured** or error or omission connected therewith, but this exclusion does not apply to the rendering or failure to render professional medical advice by medical persons employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

6.11 Libel and Slander

Liability to pay compensation arising out of the publication or utterance of a libel or slander:

- a) made prior to the **Period of Insurance**; or
- b) made at the direction of the **Insured** with the knowledge of the falsity thereof; or

- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of the **Insured**.

6.12 Fines and Punitive Damages

Liability for fines, penalties, liquidated damages, punitive damages, exemplary damages, or aggravated damages and any additional damages arising from the multiplication of compensatory damages.

6.13 Pollution

- a) Liability to pay compensation for **Personal Injury, Property Damage** or **Advertising Liability** caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape:
- i. is neither reasonably expected nor intended by the **Insured**; and,
- ii. is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance**;
- b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the **Period of Insurance** and results in **Personal Injury, Property Damage** or **Advertising Liability** and is not otherwise excluded by this **Policy**; or
- c) The actual alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants in the United States of America (USA) or Canada or in any country to which the laws of the USA or Canada apply.

Provided that **Our** total aggregate liability during any one **Period of Insurance** in respect of all claims arising out of such **Personal Injury, Property Damage** or **Advertising Liability** or such costs or expenses shall not exceed the **Policy Limit** stated in the **Policy Schedule**.

6.14 Asbestos

Liability to pay compensation for **Personal Injury, Property Damage** or **Advertising Liability** caused by, arising out of, or in connection with, the use or presence of asbestos.

6.15 Nuclear

Liability to pay compensation for **Personal Injury** or **Property Damage** of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste from the contamination of nuclear fuel. For the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.

Section 7

Other Matters

6.16 War

Liability to pay compensation for **Personal Injury** or **Property Damage** directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, rebellion, insurrection, military or usurped power.

6.17 Terrorism

Liability directly or indirectly caused by or contributed to, by, or arising from or happening through or in connection with any act of **Terrorism**.

In accordance with the Terrorism Act 2003 this exclusion will not apply in respect of an act deemed by the Federal Treasurer to be a declared terrorist incident.

6.18 Electronic Data

Liability to pay compensation for **Personal Injury** or **Property Damage** arising directly or indirectly out of, or in any way involving the **Insured's Internet Operations**.

This exclusion does not apply to **Personal Injury** or **Property Damage** arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

6.19 Advertising Liability

Liability to pay compensation for **Advertising Liability** arising from:

- a) offences committed prior to the **Period of Insurance**;
- b) offences made at the direction of the **Insured** with knowledge of the illegality or falsity thereof;
- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of the **Products**, goods or services;
- e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the **Products**, goods or services sold, offered for sale or advertised, but this exception exclusion does not apply to titles or slogans;
- f) failure of the **Products**, goods or services to conform with advertised performance, quality, fitness or durability;
- g) any **Insured** whose business is advertising, broadcasting, publishing or telecasting.

7.1 Claims Control

Notice in writing shall be given to **Us** as soon as possible of every **Occurrence**, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this **Policy**.

- a) The **Insured** shall not without **Our** consent in writing make any admission, offer, promise or payment in connection with any **Occurrence** or claim and if **We** so desire **We** shall be entitled to take over and conduct in the **Insured's** name the defence or settlement of any claim and **We** may make such investigation, negotiation and settlement of any claim or suit as it deems expedient.
- b) The **Insured** shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without **Our** consent until **We** have had the opportunity of inspection.
- c) **We** shall be entitled to prosecute in the **Insured's** name at **Our** own expense and for **Our** own benefit any claim for indemnity for damages or otherwise.
- d) **We** shall have full discretion in the conduct of any proceedings in connection with any claim and the **Insured** shall give all information and assistance as **We** may require in the prosecution, defence or settlement of any claim.
- e) In the event of an **Occurrence**, the **Insured** shall promptly take at the **Insured's** expense all reasonable steps to prevent other **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the same or similar conditions, but such expense shall not be recoverable under this **Policy**.
- f) **We** shall be entitled to attend any inquest in respect of which there may arise liability under this **Policy**.

7.2 Discharge of Liabilities

We may at any time pay to the **Insured** in respect of all claims against the **Insured** arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by **Us** which sum or sums would reduce the amount of **Our** unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment **We** shall relinquish conduct or control of and be under no further liability under the **Policy** in connection with such claim or claims except for costs charges or expenses recoverable from the **Insured** in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by **Us** or by the **Insured** with **Our** written consent prior to the date of such payments.

7.3 Reasonable Care

The **Insured** shall:

- a) take all reasonable precautions to:
 - i. prevent **Personal Injury, Property Damage or Advertising Liability**;
 - ii. prevent the manufacture, sale or supply of defective products; and
 - iii. comply and ensure that the **Insured's** workers, servants and agents comply with all Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for the safety of persons and property;
- b) at the **Insured's** own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.

7.4 Cross Liabilities

Where more than one party comprises the **Insured** each of the parties shall be considered as a separate and distinct unit and the word **Insured** shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of **Our** liability under this **Policy** in respect of any **Occurrence** or **Period of Insurance**.

7.5 Alteration of Risk

The **Insured** must provide **Us** with immediate written notice of:

- a) every change which materially varies any of the facts or circumstances existing at the commencement of this **Policy** that comes to the **Insured's** knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the **Insured's** knowledge; and
- b) if the **Insured** does not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, subject to the Insurance Contracts Act, 1984, **We** may refuse to pay a claim, either in whole or in part.

7.6 Subrogation

In the event of payment under this **Policy** to or on behalf of the **Insured**, **We** shall be subrogated to all the **Insured's** rights of recovery against all persons and organisations and the **Insured** shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

7.7 Other Insurances

If the **Insured** makes a claim under this **Policy** in respect of an **Occurrence** recoverable under this **Policy** which **Occurrence** is or may be covered in whole or in part by any other insurance, then the **Insured** must advise **Us** of the full details of such other insurance when making a claim under this **Policy**.

Subject to the Insurance Contracts Act, 1984, **We** reserve the right to seek contribution from the other insurer(s).

7.8 Insurance Arranged By Principal

If the **Insured** enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the **Insured** for any loss or liability arising out of the performance of the said agreement then **We** will (subject to the terms and conditions of this **Policy**) only indemnify the **Insured** for loss or liability not covered by the policy of insurance provided by the Principal.

7.9 Cancellation

- a) The **Policyholder** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms: **We** will be entitled to retain premium for pro-rata 'time on risk' subject to a minimum administration charge of \$250 plus applicable statutory charges;
- b) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to the **Insured** of the date from which cancellation is to take effect;
- c) **We** may deliver this notice to the **Insured** personally, or post it by certified mail (to the **Insured's** broker or to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice;
- d) When the premium is subject to adjustment, cancellation will not affect the **Insured's** obligation to supply such information as **We** may require for the adjustment of the premium. Cancellation will not affect the **Insured's** obligations to pay the amount of adjustment applicable up to the date of cancellation.

7.10 Inspection and Premium Adjustment

We shall be permitted but not obligated to inspect the **Insured's** property and operations at any time. Neither **Our** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe. **We** may examine and audit the **Insured's** books and records at any time during the **Period of Insurance** and extensions thereof and within three (3) years after the final termination of this **Policy**, as far as they relate to the subject matter insured.

If the first or renewal premium for the **Policy** or part thereof shall have been calculated on estimates furnished by the **Insured**, then the **Insured** shall keep an accurate record containing all particulars relative thereto and shall at all times allow **Us** to inspect such records. The **Policyholder** shall within thirty (30) days after the expiry of each **Period of Insurance** furnish to **Us** such particulars and information as **We** may require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to the **Insured** as the case maybe subject to receipt and retention of any minimum premium charged by **Us**.

7.11 Insurance Contracts Act

Nothing contained in this **Policy** shall be construed to reduce or waive either the **Insured's** or **Our** privileges, rights or remedies available under the Insurance Contracts Act, 1984 as amended.

Section 8

Words With Special Meaning

7.12 Agreement Limiting Rights

If the **Insured** has entered into any agreement which excludes or limits a right which the **Insured** may have against any party, then, subject to the Insurance Contracts Act, 1984, **We** will not be liable for any claim under the **Policy** to the extent of such exclusion or limitation.

7.13 Australian Jurisdiction

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

7.14 Goods and Services Tax

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 the **Insured** is, 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.

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 payment by the amount of any Input Tax Credit that the **Insured** 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.

8.1 Words in bold type and capital letters

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Policy Schedule**.

8.2 Advertising Liability means:

- a) libel, slander or defamation;
- b) infringement of copyright or of title or slogan;
- c) piracy or unfair competition or idea misappropriation under an implied contract;
- d) invasion of privacy;

committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activities or any advertising activities conducted on behalf of the **Insured**, in the course of advertising the **Insured's Products**, goods or services.

8.3 Aircraft means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.

8.4 Business means the business stated in the **Schedule** and shall include the activities of any canteen, social, sports, welfare, and /or child care organisation or first aid, medical, fire or ambulance services.

8.5 Excess means the amount payable by the **Insured** in respect to each **Occurrence** and includes all **Supplementary Payments**.

8.6 Insured

Each of the following is insured under this **Policy** to the extent set forth below:

- a) The **Policyholder**;
- b) All subsidiary companies (now or hereafter constituted) of the **Policyholder** whose place of incorporation is within Australia and whose business falls within the definition of **Business**;
- c) Any director, executive officer, employee, partner or shareholder of the **Policyholder** or of any company designated in paragraph (b) above but only while acting within the scope of their duties in such capacity;
- d) Any party with whom the **Policyholder** (or any company designated in paragraph b) above) has entered into an agreement for the purpose of the **Business**, but only for **Occurrences** for which the **Policyholder** above would be liable in the absence of the agreement and only to the extent that the agreement requires the **Policyholder** to indemnify that party in relation to the **Occurrence**;
- e) any incorporated or unincorporated association or organisation including their office bearers and members organised by the **Insured** (other than

an **Insured** designated in paragraph d) above) or their employees with the consent of the **Insured** for the purpose of providing canteen, social, sports, welfare and or child care organisations or first aid, medical, fire or ambulance services for such employees.

8.7 Insured's Products means anything, including any packaging or container thereof (after it has ceased to be in the possession or control of the **Insured**) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the **Insured**.

8.8 Internet Operations means the following:

- a) Use of electronic mail systems by the **Insured's** employees, including part-time and temporary staff, and others within the **Insured's** organisation;
- b) Access through the **Insured's** network to the world wide web or a public internet site by the **Insured's** employees, including part-time and temporary staff, and others within the **Insured's** organisation;
- c) Access to the **Insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web for the **Insured's** customers or others outside the **Insured's** organisation; and
- d) The operation and maintenance of the **Insured's** web site.

8.9 Medical Persons means medical doctors, medical nurses, dentists and first aid attendants.

8.10 Occurrence means an event including continuous or repeated exposure to substantially the same general conditions, which causes **Personal Injury** or **Property Damage** or **Advertising Liability** none of which is expected or intended from the standpoint of the **Insured**.

8.11 Period of Insurance means the duration of this **Policy** as stated in the **Schedule** incorporated into the **Policy**.

8.12 Personal Injury means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, false imprisonment, malicious prosecution and humiliation;
- c) libel, slander, defamation of character;
- d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
- e) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property,

which occurs during the **Period of Insurance**.

8.13 Policy Limit means the amount(s) specified as such in the **Schedule**.

8.14 Policy means the insurance **Policy** made up of:

- a) this **Policy** document;
- b) the **Schedule** to this **Policy**; and
- c) the endorsements, if any, contained in the **Schedule**.

8.15 Policyholder means the entity or natural person specified in the **Schedule**.

8.16 Products Liability means **Personal Injury** or **Property Damage**:

- a) caused by any defect, or the harmful nature of any of the **Insured's Products**;
- b) resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by the **Insured** concerning the use or storage of the **Insured's Products**.

8.17 Property Damage means:

- a) physical injury to or destruction or loss of tangible property which occurs during the **Period of Insurance** and any loss of use of that property resulting therefrom; or
- b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the **Period of Insurance**.

8.18 Proposal

The written **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

8.19 Public Liability means liability covered by this **Policy** but does not include **Products Liability**.

8.20 Schedule means new **Policy** schedule, renewal schedule or endorsement schedule issued by **Us**.

8.21 Terrorism means an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or 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 or 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, to fear.

8.22 Tool of Trade means any vehicle which has a tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:

- a) Vehicles whilst in transit to or from any worksite; or
- b) Vehicles used for transport or haulage.

8.23 Vehicle means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

8.24 Watercraft means any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

8.25 We or Us or Our

CGU Professional Risks, CGU Insurance Limited
ABN 27 004 478 371.

Notes

Notes

Contact details

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