Professional Indemnity + Broadform Liability
Contents

Combined Liability Package 1

Important Information 1

Professional Indemnity Insurance Policy – 1 2

Section 1 How To Read This Insurance Policy 2
  1.1 Words with special meanings 2
  1.2 Policy interpretation 2
  1.3 Paragraph headings 2

Section 2 The Insurance Contract 2

Section 3 The Cover We Provide 2
  3.1 The cover we provide 2
  3.2 Civil liability clarification 2
  3.3 Claim investigation costs 2
  3.4 Advancement of claims investigation costs 3
  3.5 Enquiries cover 3
  3.6 Continuous cover 3
  3.7 Court attendance costs 3
  3.8 Lost documents 3
  3.9 Compensatory civil penalties 4
  3.10 Run-off cover for the policyholder 4
  3.11 Public relations cover 4
  3.12 Extended notification period 4
  3.13 Employment practices liability cover 5
  3.14 Fidelity cover 5

Section 4 Who Is Covered 6
  4.1 Policyholder 6
  4.2 Vicarious liability for agents or consultants 6
  4.3 Other insureds
    a) Employees 6
    b) Principal’s previous business 6
    c) Prior corporate entities 6
    d) Merged and/or newly acquired subsidiaries 6
    e) Former subsidiaries run-off cover 6
  4.4 Cover to spouse, estates and legal representatives 6
  4.5 Joint venture 6

Section 5 Limits To The Amount Of Cover 7
  5.1 The policy limit 7
  5.2 Reinstatement of the policy limit
    a) Limits on reinstatement 7
    b) Limit of cover for claim investigation costs 7
  5.3 Cover for claim investigation costs if the policy limit is exceeded 7
  5.4 Limit if multiple persons and/or entities are covered 7
  5.5 Specific cover limits 7
  5.6 GST Input Tax Credits 7

Section 6 What Is Not Covered 8
  6.1 Known claims and known circumstances 8
  6.2 Foreign jurisdictions 8
  6.3 Assumed duty or obligation 8
  6.4 Related parties 8
  6.5 Refund of Professional fees and trading debts 8
  6.6 Profit 8
  6.7 Insolvency 8
  6.8 Goods and workmanship 8
  6.9 Employers’ liability, directors’ and officers’ liability, occupiers’ liability, motor, marine 9
  6.10 Punitive and exemplary damages 9
  6.11 Intentional damage 9
  6.12 Deregistration 9
  6.13 Asbestos 9
  6.14 Radioactivity and nuclear hazards 9
  6.15 War and uprisings 9
  6.16 Terrorism 9
  6.17 Pollution 9

Section 7 Investigation, Defence And Settlement Of Claims 10
  7.1 We must be told about claims 10
  7.2 Claims co-operation 10
  7.3 We can protect our position 10
  7.4 Disclosure of information to us in respect of cover 10
  7.5 We can manage the claim (or covered claim) 10
  7.6 An Insured must not admit liability for or settle any claim (or covered claim) 10
  7.7 Policyholder’s right to contest 10
  7.8 Senior counsel 10
  7.9 Payments to settle potential claims 10
  7.10 Recovering money from employees 11
  7.11 Offsetting of costs and expenses 11
  7.12 The excess 11
  7.13 Loss prevention 11
  7.14 Other Insurance which may cover the risk 11
  7.15 Material change in the risk 11

Section 8 Special Provisions For Dishonesty And Fraud Or Fidelity 12

Section 9 Additional Special Provisions For Fidelity Cover 12

Section 10 Special Provisions For Employment Practices Liability Cover 13
  10.1 Loss 13
  10.2 Claim 13
  10.3 Special exclusions
    a) Strikes, lock-outs etc. 13
    b) Insolvency 13
c) Workers Compensation/Occupational Health and Safety Legislation 13

d) Bodily injury 13

e) Physical modifications to premises 13

f) Unfair contract claims 13

Section 11 Other Matters 14

11.1 The Proposal: Non-imputation 14

11.2 Authority to accept notices and to give instructions 14

11.3 Allocation 14

11.4 Payment in Australian dollars in Australia 14

11.5 Law of the policy 14

11.6 Territory covered by this policy 14

11.7 Schedule must be included 14

Section 12 Cancelling The Policy 14

12.1 The policyholder can cancel the policy 14

12.2 We can cancel the policy 14

12.3 Refund of premium 14

Section 13 Words With Special Meanings 15

13.1 Words in bold type and capital letters 15

13.2 Civil liability 15

13.3 Claim 15

13.4 Claim Investigation costs 15

13.5 Cover 15

13.6 Covered claim 15

13.7 Covered matters 15

13.8 Documents 15

13.9 Employee 15

13.10 Enquiry 15

13.11 Excess 15

13.12 Former principal 15

13.13 Insured 15

13.14 Intellectual property 15

13.15 Joint venture 16

13.16 Known circumstance 16

13.17 Period of insurance 16

13.18 Policy 16

13.19 Policy limit 16

13.20 Policyholder 16

13.21 Pollutants 16

13.22 Principal 16

13.23 Professional services 16

13.24 Proposal 16

13.25 Publicity campaign 16

13.26 Run-Off event 16

13.27 Schedule 16

13.28 Specific cover 16

13.29 Specific cover limits 16

13.30 Subsidiary 16

13.31 Terrorism 16

13.32 Uncovered matters 16

13.33 We or us or our 16

Broadform (Public And Products)

Liability Insurance – Policy 2 17

Section 1 How To Read This Insurance Policy 17

Section 2 The Insurance Contract 17

Section 3 The Cover We Provide 17

3.1 The cover We provide 17

3.2 Limit of Liability 17

Section 4 Supplementary Payments 18

Section 5 Geographical Limits 18

Section 6 What Is Not Covered 19

6.1 Employer’s Liability 19

6.2 Motor Vehicles 19

6.3 Aircraft and Watercraft 19

6.4 Property in Physical or Legal Control 19

6.5 Faulty Workmanship 20

6.6 Damage to Insured’s Products 20

6.7 Product Recall and Repair 20

6.8 Aircraft Products 20

6.9 Contractual Liability 20

6.10 Professional Liability 20

6.11 Libel and Slander 20

6.12 Fines and Punitive Damages 20

6.13 Pollution 20

6.14 Asbestos 20

6.15 Nuclear 20

6.16 War 21

6.17 Terrorism 21

6.18 Electronic Data 21

6.19 Advertising Liability 21

Section 7 Other Matters 21

7.1 Claims Control 21

7.2 Discharge of Liabilities 21

7.3 Reasonable Care 22

7.4 Cross Liabilities 22

7.5 Alteration of Risk 22

7.6 Subrogation 22

7.7 Other Insurances 22

7.8 Insurance Arranged By Principal 22

7.9 Cancellation 22

7.10 Inspection and Premium Adjustment 22

7.11 Insurance Contracts Act 23

7.12 Agreement Limiting Rights 23

7.13 Australian Jurisdiction 23

7.14 Goods and Services Tax 23

Section 8 Words With Special Meaning 23
Combined Liability Package

Policy 1 – Professional Indemnity Insurance Policy
Policy 2 – Broadform (Public and Products) Liability Policy

Important Information

How CGU protects your privacy

We use information provided by our customers to allow us to offer our products and services. This means we may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when we collect this information from someone else.

CGU will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give us your information, but this may affect our ability to provide you with insurance cover.

We may share this information with companies within our group, government and law enforcement bodies if required by law and others who provide services to us or on our behalf, some of which may be located outside of Australia.

For more details on how we collect, store, use and disclose your information, please read our Privacy Policy located at www.cgu.com.au/privacy. Alternatively, contact us at privacy@cgu.com.au or 13 15 32 and we will send you a copy. We recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of our products or services, or providing us with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how we will deal with your complaint.

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.

Interest on unallocated premium

If we are unable to issue your insurance when we receive your application, we are required to hold your Premium in a trust account on your behalf until your insurance can be issued. We will retain any interest payable by our bank to meet, among other things, bank fees and other bank costs we incur in operating the account.
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 claim 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; and

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 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;
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 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.

8
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 or settlement of any Claim in the Insured’s name; and

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 Claim 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 of 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.
8.1 When the Claim under Section 3.2e), involves theft or misappropriation of money, then We only provide Cover if:
   a) the Policyholder kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
   b) all cheques and/or payments prepared on that trust account are required to be signed by a Principal or two authorised people;
   c) 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:
   a) 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
   b) 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:
   a) the Policyholder had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions; and
   b) failed to take any reasonable action to prevent.

9.1 We do not Cover any:
   a) 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.
   b) Fidelity Loss the existence of which has only been established by profit and loss figures or by inventory calculations (including stock takes).
   c) costs incurred by the Policyholder in re-writing, amending or re-installing the Policyholder’s computer programs or systems.
   d) consequential loss arising from any dishonest or fraudulent acts or omissions of any Employee.
   e) 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.
   f) Fidelity Loss caused by or contributed to by Principals or Former Principals.
   g) loss arising from default under a loan or any type of credit offered to or by the Policyholder.
   h) 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.
   i) 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.
   j) Fidelity Loss first discovered prior to the commencement of the Period of Insurance or first discovered after the expiration of the Period of Insurance.
   k) 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.
   l) 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.

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.

c) The Proposal: Non-imputation

d) Allocation

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 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 and 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, its agents or servants to the United States of America or Canada.
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 person’s 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; or
      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.
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.
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.

Section 7
Other Matters

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 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 may be 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.
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.

---

**Section 8**

**Words With Special Meaning**

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
Contact details

Adelaide
80 Flinders Street
Adelaide SA 5000
Tel (08) 8425 6650
Fax (08) 8425 6592

Brisbane
189 Grey Street
South Brisbane QLD 4101
Tel (07) 3135 1566
Fax (07) 3135 1564

Melbourne
181 William Street
Melbourne VIC 3000
Tel (03) 9601 8700
Fax (03) 9602 5255

Perth
46 Colin Street
West Perth WA 6005
Tel (08) 9254 3750
Fax (08) 9254 3751

Sydney
388 George Street
Sydney NSW 2000
Tel (02) 8224 4655
Fax (02) 8224 4030

cgu.com.au/professionalrisks