

## Change of Insurer – Endorsement

This endorsement is dated 01 August 2017 and will apply to all policies taken out, or with a renewal effective date, on or after this date.

The information in this endorsement should be read with the last Policy You received for the Policy specified in your Policy Schedule and any other applicable endorsement.

## Changes to your Policy

Your Policy is amended by the following:

**Change 1:** Change to details of CGU Insurance Limited  
ABN 27 004 478 371 AFS Licence No. 238291

All references to “CGU Insurance Limited ABN 27 004 478 371 AFS Licence No. 238291” are deleted and replaced by “Insurance Australia Limited ABN 11 000 016 722 AFSL 227681 trading as CGU Insurance”.

**Change 2:** Change to details of CGU Insurance Limited

All references to “CGU Insurance Limited” are deleted and replaced by “Insurance Australia Limited trading as CGU Insurance”.

# Medical Establishments

## Indemnity Insurance Policy





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# Section 1

## How to Read This Insurance Policy

**1.1** 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 the **Policy** in bold type and with a capital letter.

# 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.
- 2.2** Before this **Policy** came into effect, **We** were provided with information by or on the behalf of the **Insured** (and those referred to in Section 4.2 of this **Policy**) 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 stated in the Schedule.
- 2.5** If full payment of the Gross Premium as stated in the Schedule is not made, there is no **Cover**.

# Section 3

## The Cover We Provide

### 3.1 The cover we provide

**We Cover** the **Insured** up to the **Policy Limit** (see Section 5) for any **Civil Liability** to any third party which is incurred by the **Insured** arising from the provision of **Health Care Services** and which **Claims**:

- are made against the **Insured** (or, those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force; and
- We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- arise from an act, error or omission on or after the Retroactive Date specified in the Schedule.

### 3.2 The types of claims we cover

The **Civil Liability We** provide **Cover** for in this **Policy** includes (but is not limited to) the following types of **Civil Liability Claims**:

- breach of duty (including a duty of confidentiality, a breach of privacy or a breach of fiduciary duty).
- Good Samaritan Acts**.
- unintentional defamation.
- loss of or damage to **Documents** which were in the **Insured's** physical custody or control at the time of loss or damage.
- vicarious liability of the **Insured** arising from the dishonest, fraudulent, criminal or malicious acts or omissions (including **Medical Benefits Fraud**) by person(s) otherwise the subject of **Cover** under this **Policy** (but there is no **Cover** to that person for these **Claims**).
- unintentional infringement of **Intellectual Property**.
- unintentional breaches of the Misleading & Deceptive Conduct provisions of Div 2 Part 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 Fair Trading legislation (but not for criminal liability).
- breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the belief of the person alleged to have committed the breach, that appropriate authority was held.

### 3.3 Claim investigation costs

In respect of **Covered Claims** and subject to Section 5.3, **We** also pay in addition to the **Policy Limit** (up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.

**We** only pay these, however, if either:

- a) **We** incur them; or
- b) the **Insured** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are reasonable and necessary.

**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 Employment Practices Liability Cover

Notwithstanding Section 6.9 and Section 6.21, **We Cover** the **Insured**, and each **Employee** (subject to 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 **Insured** or an **Employee** (including **Claims** brought by principals, partners, directors, officers and employees, contract or temporary workers of the **Insured**) for that **Loss** which the **Insured** is legally obliged to pay arising from:

- 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'.

### 3.5 Enquiries

For those **Enquiries** of which the **Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible while this **Policy** is in force, **We** also **Cover** the **Insured** and/or those referred to in Section 4.2 of this **Policy**, (subject to the terms of Section 4.2 of the **Policy** and the **Specific Cover Limits** set out in the Schedule for 'Enquiries') for 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, or those of the **Employees**.

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 **Insured** when the **Insured** and/or those referred to in Sections 4.2 of the **Policy** first knew of such **Known Circumstance**; and
- c) **We** continued without interruption to be the **Insured's** professional liability insurer up until this **Policy** came into effect; and
- d) had **We** been notified by the **Insured** of the **Known Circumstance** when the **Insured** and/or those referred to in Sections 4.2 of the **Policy** 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) neither the **Claim** nor **Known Circumstance** has previously been notified to **Us** or any other insurer.

If the **Insured** was entitled to have given notice under any other policy of insurance and has an entitlement to indemnity in whole or in part, then this Section 3.6 does not apply to provide **Cover** under this **Policy**.

The **Policy Limit** of the **Cover We** provide under this Section 3.6 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) or 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 **Claims Investigation Costs** will include the following payments, per day on which attendance at Court is required:

- a) payable to any **Principal** or **Former Principal**: \$500.
- b) payable to any **Employee**: \$250.

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

### 3.8 Advancement of claims investigation costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, **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 **Insured** incurring such **Claims Investigation Costs** (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **Claims Investigation Costs** paid under this Section 3.8 from the **Insured** and/or those referred to in Sections 4.2 of the **Policy** on whose behalf or for whose benefit **Claims Investigation Costs** were paid, in the event and to the extent that:

- i) the **Insured** and/or those referred to in Sections 4.2 of the **Policy** makes an admission in writing of any

fraudulent, dishonest, malicious or intentional conduct (within the meaning of Section 6.11); or

- ii) it is subsequently established, directly or indirectly, by judgment or other final adjudication, that the **Insured** and/or those referred to in Sections 4.2 of the **Policy**, was not entitled to **Cover** under this **Policy**.

### 3.9 Statutory Liability Cover

Notwithstanding Sections 6.10 and 13.2, **We** will to the extent permitted by law provide **Cover** to the **Insured** (and/or those referred to in Section 4 of this **Policy**), against any:

- a) **Penalty** payable by the **Insured** (and/or, those referred to in Section 4 of this **Policy**) as a result of a criminal or civil proceeding in respect of an offence under an **Act** which proceeding:
  - i) is served upon the **Insured** (and/or those referred to in Section 4 of this **Policy**) while this **Policy** is in force; and
  - ii) **We** are told about in writing as soon as reasonably practicable while this **Policy** is in force; and
  - iii) arises from an act, error or omission on or after the Retroactive Date specified in the Schedule which occurred in the provision of **Health Care Services**.
- b) **Statutory Liability Defence Costs** incurred in connection with proceedings specified in paragraph a) above.

**Our** total liability under the **Policy** for the payment of any and all **Penalties** and **Statutory Liability Defence Costs** shall not exceed \$500,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

Notwithstanding the above, **We** do not **Cover Penalties**, (or losses or liabilities) or any costs associated with any action or proceeding arising out of the alleged failure of the **Insured** (and/or, those referred to in Section 4 of this **Policy**) to comply with any lawful consent, demand, determination, memorandum, notice, order, schedule or the like issued under an **Act**.

For the purposes of this **Policy**,

- i) '**Act**' shall mean any of the following legislation:
  - 1. Competition and Consumer Act 2010;
  - 2. The Privacy Act 1988;
  - 3. The Corporations Act 2001;
  - 4. The Associations Incorporation Acts of the States and Territories of Australia;
  - 5. The Occupational Health & Safety legislation of any State or Territory of Australia or the Commonwealth of Australia,

including any amendment to, replacement or re-enactment of, the statutes, any regulation or other subordinate legislation made under any of these statutes, and in respect of 1. to 3. above, any equivalent legislation of a State or Territory of Australia.

- ii) '**Penalty**' shall mean a monetary fine or penalty prescribed under an **Act** but excludes any amounts payable or calculated by reference to:
  - 1. compensation;
  - 2. compliance, remedial, reparation or restitution costs;

- 3. exemplary or punitive damages;
- 4. any consequential economic loss.

- iii) '**Statutory Liability Defence Costs**' shall mean legal costs and expenses of investigating, defending or settling any proceeding specified in paragraph a) above which:
  - 1. **We** incur; or
  - 2. the **Insured** incurs after first obtaining **Our** agreement in writing and the costs and expenses are reasonable and necessary.

**We** reserve the right to recover any **Statutory Liability Defence Costs** paid under this Section 3.9 from the **Insured** and/or those referred to in Sections 4.2 of the **Policy** on whose behalf or for whose benefit **Statutory Liability Defence Costs** were paid in the event and to the extent that:

- 1. the **Insured** and/or those referred to in Sections 4.2 of the **Policy** make an admission in writing of any fraudulent, dishonest, malicious or intentional conduct (within the meaning of Section 6.11); or
- 2. it is subsequently established, directly or indirectly, by judgment or other final adjudication, that the **Insured** and/or those referred to in Sections 4.2 of the **Policy**, was not entitled to **Cover** under this **Policy**.

Notwithstanding Item 7.2 of the Schedule, the **Excess** applicable to this Section 3.9 is \$5,000 for each and every **Penalty** inclusive of **Statutory Liability Defence Costs**.

### 3.10 Run-off cover for insured until the end of the policy period

In the event that a **Run-Off Event** occurs during the Period of Insurance stated in the Schedule, to the **Insured** (and/or those referred to in Section 4.2 of this **Policy**), the **Cover** provided by this **Policy** with respect to such entity 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**.

### 3.11 Public Relations Cover

**We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by the **Insured** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a **Publicity Campaign** approved by **Us**, to prevent or mitigate damage to the reputation of the **Insured** in consequence of a **Claim** or **Covered Claim** arising from the performance or provision of **Health Care Services**.

**Our** total liability for the payment of such fees, costs and expenses of a public relations consultant under the **Policy** shall not exceed \$50,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

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 Fidelity Cover

- a) **We Cover** the **Insured** for any **Fidelity Loss** (see also Sections 8 and 9) where such **Fidelity Loss**:
- is sustained by reason of any dishonest or fraudulent conduct of an **Employee** or student;
  - is first discovered by the **Insured** during the Period of Insurance;
  - We** are told about in writing as soon as reasonably practicable during the Period of Insurance; and
  - is caused by dishonest or fraudulent conduct committed by an **Employee** or student within a period of thirty six (36) months before being first discovered by the **Insured**;
- 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** or student;
- c) The amount of the **Excess** for 'Fidelity Cover' specified in the Schedule when **We** provide **Cover** for a **Fidelity Loss** which **We Cover** under Section 3.12 of this **Policy**. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for **Fidelity Losses** under Section 3.12.
- d) The **Insured** shall give written notice, including affirmative proof of any **Fidelity Loss** with full particulars to **Us** of any **Fidelity Loss**, within the Period of Insurance. The **Insured** 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** is subject to the **Specific Cover Limit** set out in the Schedule for 'Fidelity Cover'. If no **Specific Cover Limit** is indicated in the Schedule for 'Fidelity Cover', then no **Cover** is provided by this **Policy** for **Fidelity Losses**.

### 3.13 Fund raising & social activities

**We Cover** the **Insured**, for any **Civil Liability Claims** arising from fund raising and social activities of any social club or committee of the **Insured** where such activities have been sanctioned by, and are conducted for the benefit of, the **Insured**. This **Policy** however does not **Cover** any **Claim** arising from or which involves or relates to bodily injury or property damage.

### 3.14 Vicarious liability for medical practitioners

**We Cover** the **Insured**, for any **Claim** otherwise **Covered** by this **Policy** arising from the **Insured's** vicarious liability for and non-delegable duty of care in respect of the provision of **Health Care Services** by **Medical Practitioners**.

### 3.15 Molestation Defence Costs Cover

Notwithstanding Section 6.21, **We** will to the extent permitted by law, pay all reasonable and necessary **Claim Investigation Costs** of investigating, defending or settling any **Claim** or **Enquiry** otherwise excluded by Section 6.21 in so far as such conduct was committed or allegedly committed by an **Employee** or student in the course of the provision of **Health Care Services** provided that:

- nothing in this **Policy** shall require **Us** to **Cover** any **Employee** or student who has allegedly committed any of the conduct specified in Section 6.21; and
- if **We** elect not to take over and conduct the investigation, defence or settlement of the **Claim** or **Enquiry**, **Our** written consent is obtained prior to the **Insured** incurring such **Claim Investigation Costs** (such consent not to be unreasonably withheld);
- Cover** under this Section 3.15 is limited to \$250,000 in the aggregate for such **Claim Investigation Costs**. This is included within and not in addition to the 'Specific Cover Limit' specified in the Schedule for Section 3.5, nor in addition to the **Policy Limit**;
- The **Excess** in respect to such **Claim Investigation Costs** is \$20,000 each and every **Claim** or **Enquiry**.
- We** reserve the right to recover any such **Claim Investigation Costs** from such **Employee** or student alleged to have committed any of the conduct specified in Section 6.21:
  - if the **Employee** or student makes an admission in writing of any conduct of the type specified in Section 6.21; or
  - in the event and to the extent that it is subsequently established, directly or indirectly, by judgment, finding or final adjudication, that the **Employee** or student has committed conduct of the type specified in Section 6.21.

### 3.16 Extended notification period

- In the event that this **Policy** is not renewed or is cancelled for any reason other than non-payment of premium then the **Insured** has until such time that the **Insured** 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** (and/or those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force;
- Cover** under this Section 3.16:
  - does not reinstate or increase the **Policy Limit** or extend the Period of Insurance.
  - will only apply to acts, errors or omissions committed or alleged to have been committed by the **Insured** (and/or those referred to in Section 4.2 of this **Policy**) before the end of the Period of Insurance or the cancellation date of this **Policy** where this **Policy** has been cancelled; and
  - is limited to **Claims** and **Enquiries** arising from an act, error or omission which occurred on or after the Retroactive Date specified in the Schedule.

### 3.17 Free legal consultation

During the Period of Insurance the **Insured** is entitled to up to two hours in total of free legal advice from the appointed firms and nominated practitioners listed in the Schedule on any and all matters relating to the **Health Care Services** subject always to the following:

- the Schedule must be presented to the legal practitioner when requesting legal advice under this Section 3.17. If the Schedule is not presented then no legal advice can be sought under this Section 3.17.

- b) the legal practitioner will sign off in the Schedule the free legal advice time units used in connection with the matter.
- c) entitlement to legal advice is limited to a maximum of two hours in total per Period of Insurance and any unused hours or part thereof cannot be aggregated from one policy period to another.
- d) **We** reserve the right to change the appointed firms or nominated practitioners at any time. Changes to the appointed firms and nominated practitioners will be notified to the **Insured** on request.
- e) the **Insured** may not seek under this Section 3.17 legal advice on this **Policy** or other indemnity issues concerning insurance policies issued by **Us**.
- f) if **Cover** under this **Policy** is sought by the **Insured** in respect of any matter on which the **Insured** has sought legal advice under this Section 3.17 from the appointed firm or nominated legal practitioner, the **Insured** authorises **Us** (at **Our** discretion) to engage the appointed firm to represent the **Insured** and authorises the appointed firm when engaged to disclose to **Us** any information obtained in the course of tendering advice to the **Insured**. To the extent necessary, the **Insured** (and/or, those referred to in Section 4.2 of this **Policy**) waive as between **Us** and them all claims to legal professional privilege.

# Section 4

## Who is Covered

### 4.1 Insured

**We Cover** the **Insured** named in the Schedule (and as defined in Section 13 of the **Policy**) for **Claims** and **Covered Claims** of the type and on the basis specified in Section 3, arising from the provision of **Health Care Services**.

The provision of **Health Care Services** by or on behalf of the **Insured** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants of the **Insured** in the provision **Health Care Services** and for which the **Insured** is liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### 4.2 Others

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

#### a) Employees (and former Employees)

**Employees** (and former **Employees**) of the **Insured** in respect of **Civil Liability** arising from the provision of **Health Care Services** but not in respect of **Claims** or losses under Section 3.2 e) of this **Policy**. This **Policy**, however, does not provide **Cover** to **Medical Practitioners**.

#### b) Students

Tertiary students who are or have been assigned to the **Insured** in respect of the provision of **Health Care Services** while under the direct supervision and control of the **Insured**.

#### c) Principals Incoming

Notwithstanding Section 6.3 e) **Principals** of the **Insured** in respect of **Civil Liability** arising in their capacity as a principal of a prior establishment disclosed in the **Proposal**, (practising in the same health care discipline as the **Insured**) in respect of **Claims** arising from the provision on behalf of the prior establishment of **Health Care Services** of the type **Covered** under this **Policy**.

#### d) Prior Corporate Entities

Corporate entities through which the **Insured** previously traded, arising from the provision of **Health Care Services**.

This extension of **Cover**, however, is subject to receipt by **Us**, at the time of any such **Claim**, of an express written request from the named **Insured** under the **Policy** to so extend the **Policy Cover**.

#### e) Mergers & Acquisitions, Former Subsidiaries

i) Entities (practising in the same health care discipline as the **Insured**) in respect of **Claims** arising from the provision of **Health Care Services** of substantially the same type of those **Covered** by this **Policy** which are merged with or acquired by the **Insured** while this **Policy** is in force. This **Cover** is only for a maximum of thirty days from the date of the merger or acquisition

(or until the **Policy** expires if that is sooner). **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. The Retroactive Date for such **Cover** is deemed to be the date of the merger with or acquisition by the **Insured** unless **We** otherwise agree in writing.

- ii) Any former subsidiary company or other incorporated entity of the **Insured** that is disclosed in the **Proposal**, provided that such **Cover** shall only apply in respect of:
  1. **Claims** arising from the provision of **Health Care Services** of substantially the same type as those **Covered** by this **Policy**; and
  2. 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 **Insured**.

f) **Committee Members**

Any person who is, during the Period of Insurance, a member of any fundraising or ethics committee of the **Insured**, but only in respect of **Claims** or losses arising from such committee activities sanctioned by and undertaken on behalf of the **Insured** and in connection with its **Health Care Services**.

**We** only provide **Cover** to the persons, firms or incorporated bodies described in Section 4.2 a) to f) above if the persons, firms or incorporated bodies claiming **Cover** each agree in writing, within a reasonable time of notification of the **Claim** or **Covered Claim** to **Us**:

- i) to be bound by this **Policy**; and
- ii) to be liable individually, and together with the **Insured**, 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**.

#### 4.3 Cover to estates and legal representatives

If an **Insured**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover** the 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**.

#### 4.4 Joint venture

- a) If the name of a **Joint Venture** is included in the Schedule, under 'Joint Ventures', then **We Cover** the **Insured** for the **Insured'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** (and/or those referred to in Section 4.2 of the **Policy**) arising from the provision of **Health Care 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, it 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 **Cover** the **Insured** 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 Cover** 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**) for losses under Sections 3.4, 3.5 or 3.12.
- ii) the aggregate **Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same act(s), error(s) or omission(s).
- iii) if there is extra insurance in excess of the limit of this **Policy**, then **Cover** in excess of one **Policy Limit** (up to a maximum of twice the **Policy Limit**) is only available for so much of the liability (otherwise **Covered** by this **Policy**) as 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 Cover** 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 covered

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

## 5.5 Specific cover limits

If the Schedule indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then the applicable **Specific Cover Limits** and not the **Policy Limit** apply to **Specific Cover Claims** and **Covered Claims**. The **Policy Limit** still applies to all other **Claims** and **Covered Claims** individually and in the aggregate (including **Claims** and **Covered Claims** for which **Specific Cover Limits** apply, which 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 a payment of this kind, shall be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that the **Insured** is entitled to claim an Input Tax Credit for a payment required to be made by the **Insured** as an **Excess**, then the amount of the **Excess** shall be net of the entitlement of the **Insured** 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 **Insured** 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 **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 6

## What is Not Covered

**We do not Cover** 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 a **Known Circumstance**; or
- c) Directly or indirectly based upon, attributed to or in consequence of any **Known Circumstance** or **Known Claims** or **Covered Claims**; or
- d) Disclosed in the **Proposal** or arising from facts or circumstances disclosed in the **Proposal**; or
- e) If the **Policy** is endorsed or amended mid term, for any **Claim** or **Covered Claim** or any associated costs that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** or any associated costs would not have been **Covered** by the **Policy** before such amendment/endorsement.

### 6.2 Foreign courts

- a) First brought in a court outside Australia or New Zealand (or outside any country specified in the 'Jurisdictional Limits' in the Schedule); or
- b) Brought in a court within Australia or New Zealand to enforce a judgement handed down in a court outside Australia or New Zealand; or
- c) Where the proper law of a country other than Australia or New Zealand (or any country specified in the 'Jurisdictional Limits' of the Schedule) is applied to any of the issues in any **Claim** or **Covered Claim**, **Covered** by this **Policy**.

### 6.3 Assumed duty or obligation

- a) Alleging a liability under a contractual warranty, guarantee or undertaking (unless the liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) About circumstances where a right of contribution or indemnity has been given up by an **Insured**; or
- c) About circumstances where someone has done work or provided services under an arrangement or an agreement with the **Insured** which limits any potential right for the **Insured** to receive contribution or indemnity from that person; or
- d) Arising from any **Civil Liability** which the **Insured** agrees to accept in connection with the provision of **Health Care Services** which is more onerous than that which the **Insured** would otherwise have at common law; or
- e) Arising from any business not conducted for or on behalf of the **Insured** firm or incorporated body.

## 6.4 Related parties

- a) Against the **Insured** brought by or on behalf of:
  - i) any of the persons or entities specified in Section 4 of the **Policy**; or
  - ii) any company in respect of which the **Insured** or any person or party specified in a) i) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
  - iii) any trust in respect of which the **Insured** or any person or party specified in a) i) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
  - iv) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or has an executive role in the operation of the **Insured**.
- b) By or on behalf of the any of the persons or entities specified in Section 4 against any of the persons or entities specified in Section 4.

## 6.5 Refund of professional fees and trading debts

- a) For (or calculated by reference to) the refund of professional fees or charges (by way of damages or otherwise);
- b) For the costs and expenses incurred by or on behalf of the **Insured** in complying with any contractual obligations or making good any faulty product;
- 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;
- d) Arising from a liability to pay trading debts, or the repayment of any loan.

## 6.6 Profit

Incurred by or on behalf of the **Insured** (other than as **Covered** by Sections 3.3, 3.5 and 3.12 of this **Policy**) which is not a liability to a third party. In particular, there is no **Cover** under this **Policy** for any component of profit derived or derivable by the **Insured** from the sale or supply of any goods, services or rights by or on behalf of the **Insured**.

## 6.7 Insolvency

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

## 6.8 Goods & workmanship

Directly or indirectly arising from:

- a) the manufacture, installation, assembly, processing, sale or supply of goods by or on behalf of the **Insured**; or
- 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 the **Insured**, or from supervision of such workmanship by an **Insured**.

Notwithstanding the above, this Exclusion shall not apply to such **Claims** or **Covered Claims** directly arising from a breach of a professional duty of care during the actual provision of **Health Care Services**.

## 6.9 Employers' Liability, Directors' & Officers' Liability, Occupiers' Liability, Motor, Marine, etc.

- a) Directly or indirectly based upon, attributable to or in consequence of the **Insured's** liability as an employer; or
- b) 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.
- 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 occupation (or alleged occupation) of land or buildings by an **Insured**; or
- f) Arising from or in respect of an **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

## 6.10 Punitive & 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 Section 3.2(e):

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

## 6.12 Deregistration

In so far as the **Insured** is required by law to maintain a statutory registration in order to be entitled to practice or provide the **Health Care Services, Claims** or **Covered Claims** arising from acts, errors or omissions by or of 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.

Notwithstanding the above, this Exclusion shall not apply to such **Claims** or **Covered Claims** arising from the provision of **Health Care Services** for the treatment of asbestos related diseases or illnesses.

## 6.14 Radioactivity & 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.

Notwithstanding the above, this Exclusion shall not apply to **Claims** or **Covered Claims** arising from the use of radio-isotopes, radium or radium compounds when used in or incidental to medical procedures arising from the provision of **Health Care Services** by or on behalf of the **Insured** and away from the place where such substances are made.

## 6.15 War and uprising

Arising directly 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.

Notwithstanding the above, this Exclusion shall not apply to such **Claims** or **Covered Claims** arising from the provision of **Health Care Services** by or on behalf of the **Insured** for any bodily injury (including mental anguish or emotional distress), sickness or disease caused by any of the acts specified in paragraph a) above.

## 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**.

Notwithstanding the above this Exclusion shall not apply to such **Claims** or **Covered Claims** arising from the provision of **Health Care Services** for any bodily injury (including mental anguish or emotional distress), sickness or disease caused by **Terrorism**.

## 6.17 Pollution

Arising directly or indirectly from the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere, or any water course or body of water.

## 6.18 Medical practitioners

Against **Medical Practitioners** regardless of whether such **Medical Practitioners** are employed by the **Insured**, acting as a contractor of the **Insured** entity or in any other capacity.

## 6.19 Euthanasia

Arising directly out of any procedure or advice rendered concerning euthanasia.

## 6.20 Services rendered under the influence of intoxicants or narcotics

Arising from any services rendered by any person, while under the influence of intoxicants or narcotics or from any alleged failure to render services competently or at all because of such influence.

For the purpose of this Exclusion, the term intoxicants shall not include a headache tablet, aspirin, or other medication prescribed for the person, by a **Medical Practitioner** for a medical condition, provided that such medication does not, as a usual side effect, induce fatigue or reduce competency or otherwise affect the **Insured** or such person in the provision of the **Health Care Services Covered** by this **Policy**.

## 6.21 Sexual and other misconduct

Directly or indirectly related to, based upon, attributable to or in consequence of any actual or alleged molestation of, interference with, bullying of, mental abuse of or physical abuse of any person.

# Section 7

## Investigation, Defence and Settlement of Claims

### 7.1 We must be told about claims

The **Insured** must tell **Us** in writing about a **Claim** or loss as soon as possible and while this **Policy** is in force. If this is not done the **Insured's** right to **Cover** under this **Policy** may be affected.

### 7.2 Claims cooperation

Each **Insured** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen the **Insured's** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **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 loss; 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 the cover and the claim (or covered claim)

The solicitors instructed by **Us** 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**.

### 7.5 We can manage the claim (or covered claim) on the Insured's behalf

**We** can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in the **Insured's** name; and
- b) claim in the **Insured's** name, any right the **Insured** may have for contribution or indemnity.

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

An **Insured** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any costs or expenses for a **Claim** (or **Covered Claim**)

without first obtaining **Our** consent in writing. If **Our** prior consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

### 7.7 Insured's right to contest

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

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

### 7.8 Senior counsel

- a) Unless a Senior Counsel, that **We** and the **Insured** both agree to instruct, advises that the **Claim** or **Covered Claim** should be contested, then neither **We** nor the **Insured** 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 the:
  - i) economics of the matter having regard to but not limited to the;
    1. damages and costs likely to be recovered; and
    2. likely costs of defence; and
  - ii) **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 be 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** listed in the Schedule.

### 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 in addition,
- b) a payment for the purpose of calculating the total of all **Claims** or **Covered Claim** 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 student, **Employee** or former **Employee** unless the **Claim** or **Covered Claim** arose from dishonest, fraudulent, criminal or malicious acts or omissions of by the student, **Employee** or former **Employee**.

### 7.11 Offsetting of costs & expenses the insured owes us against what we owe insured

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Insured** must pay whatever amount is above that liability immediately **We** ask for it. **We** can offset that payment due from the **Insured** against (and deduct that amount from) any amount **We** must pay to or on behalf of the **Insured** under this **Policy**.

### 7.12 The excess

- a) **We** only **Cover** the **Insured** (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:
  - i) the amount of the **Excess** for 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) the amount of the **Excess** for 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) the amount of the **Excess** for costs of **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) the amount of the **Excess** for 'Employment Practices Liability' specified in the Schedule when **We** provide **Cover** for an Employment Practices Liability **Claim** which **We Cover** under Section 3.4 of this **Policy**. The **Insured** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for **Covered Claims** under Section 3.4.
  - v) only one **Excess** for all **Covered Claims** or losses **Covered** by this **Policy** arising from the same act, error or omission.
- c) In the event of a **Claim, Covered Claim** or loss arising from separate acts, errors or omissions, then an **Excess** shall apply in respect of each such act, error or omission.

### 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 loss which may be **Covered** under this **Policy**.

### 7.14 Other insurance which may cover the risk

The **Insured** 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 **Insured** must immediately advise **Us** in writing of any material change in the risk **Covered** by this **Policy**



# Section 8

## Special Provisions for Dishonesty and Fraud or Fidelity

- 8.1** When a **Claim** under Section 3.2 e) or **Fidelity Loss** under Section 3.12 involves theft or misappropriation of money, then **We** only provide **Cover** if:
- the **Insured** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
  - all cheques prepared on that trust account are required to be signed by a **Principal**, or two authorised people.
- 8.2** The **Insured** must take all reasonable precautions to prevent any loss and continue 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 3.2 e) or **Fidelity Loss** under Section 3.12.
- 8.3** **We** deduct from any money **We** pay for a **Claim** or loss under Section 3.2 e) or **Fidelity Loss** under Section 3.12:
- the amount of any money which the **Insured** would have paid to the fraudulent, dishonest, criminal or malicious person the subject of **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
  - the amount of any money of or to which persons referred to in paragraph a) above is entitled which the **Insured** holds (if **We** can do so by law).
- 8.4** Notwithstanding Sections 3.2 e) and Section 3.12, there is no **Cover** under this **Policy** to any person or entity the subject of **Cover** under this **Policy**, 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:
- an **Insured** had knowledge or had reason to suspect at or prior to the time of such acts or omissions; and
  - failed to take any reasonable action to prevent.
- 8.5** There is no **Cover** under this **Policy** for any **Claim** or **Fidelity Loss** arising from or related to or which involves any dishonest, fraudulent, criminal, malicious acts, errors or omissions other than as **Covered** pursuant to Section 3.2 e) and Section 3.12 of this **Policy**.

# Section 9

## Additional Special Provisions for Fidelity Cover

In relation to Section 3.12 only:

- 9.1** **We** do not **Cover**:
- any **Fidelity Loss** sustained outside of Australia or New Zealand or any loss arising directly or indirectly from any loss sustained outside of Australia or New Zealand.
  - any **Fidelity Loss** the existence of which has only been established by profit and loss figures or by inventory calculations (including stock-takes).
  - any costs incurred by the **Insured** in re-writing, amending or re-installing the **Insured's** computer programs or systems.
  - any consequential loss arising from any dishonest or fraudulent acts or omissions of any **Employee**.
  - any **Fidelity Loss** caused by or contributed to by an **Employee** who was not employed by the **Insured** when the act or omission which caused or contributed to the loss occurred.
  - any **Fidelity Loss** caused by or contributed to by **Principals** or **Former Principals**.
  - any loss arising from default under a loan or any type of credit offered to or by the **Insured**.
  - any **Fidelity Loss** arising directly or indirectly from any dishonest or fraudulent acts or omissions which the **Insured** had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent.
  - any **Fidelity Loss** incurred by or on behalf of the **Insured** in respect of which the **Insured** committed or condoned any such dishonest, fraudulent, criminal or malicious acts or omissions.
  - any **Fidelity Loss** first discovered prior to the commencement of the Period of Insurance or first discovered after the expiration of the Period of Insurance.
  - any **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 five per cent or more of the voting share capital of the **Insured**.
  - any **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) any 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) any 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 **Insured** caused by the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or other property owned by the **Insured**;
- b) does not include wages, salaries, or other remuneration benefits or entitlements of the **Insured** (and/or those referred to in Section 4.2).

# Section 10

## Additional Special Provisions for Employment Practices Liability Cover

In relation to Section 3.4 only:

### 10.1 Loss

'**Loss**' means the amount payable in respect of a **Claim** made against the **Insured** and any of its **Employees** under a contract of service 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 **Insured** 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 **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 the **Insured**; or
- b) any written demand from a third party claiming compensation against the **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**

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

b) **Insolvency**

**Claims** 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 **Insured** but this exclusion is not to apply to **Claims** notified prior to the appointment;

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

**Claims** 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**

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

e) **Physical Modifications to Premises**

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

f) **Unfair Contract Claims**

- i) **Claims** or proceedings 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

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 **Covered** under this **Policy**.

If there is any fact or misstatement in the **Proposal** that relates to one natural person who is an **Insured, We** do not attribute it to any other natural person who is an **Insured**, for the purposes of this **Policy**.

### 11.2 Authority to accept notices & to give instructions

The persons listed as the **Insured** in the Schedule are appointed individually and jointly as agent of:

- a) each **Insured**; and
- b) any person or entity who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**),

in all matters relating to this **Policy**, and to **Claims** or **Covered Claims Covered** by the **Policy**.

In particular (but without limitation) the persons listed in the Schedule as the **Insured** are agents for the following purposes:

- i) 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
- ii) to accept endorsements or other notices provided for in this **Policy**; and
- iii) 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
- iv) to consent to any settlement **We** recommend; and
- v) 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 Claim**; and
- vi) 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 De-registration

The **Insured** must tell **Us** immediately in writing if an **Insured's** statutory registration, which is relevant to the provision by the **Insured** of **Health Care Services**, is cancelled, suspended or terminated or has had conditions imposed or operable during the Period of Insurance stated in the Schedule.

### 11.4 Singular & plural

The singular includes the plural and the plural includes the singular, except if the context requires otherwise.

### 11.5 Payment in Australian dollars in Australia

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

### 11.6 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**.

### 11.7 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').

### 11.8 Schedule must be included

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

### 11.9 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 12

## Cancelling the Policy

### 12.1 The Insured can cancel the policy

The **Insured** 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. (Note stamp duty for a mid term cancellation is not refundable in some states).

### 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 **Insured** of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to the **Insured** personally, or post it by registered or 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.
- c) Under Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at any time where:
  - i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
  - ii. it is an interim contract of general insurance.

### 12.3 Refund of premium after cancellation

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

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 on the **Policy** Schedule.

### 13.1 Civil liability

Liability for the damages, costs and expenses which a civil court orders the **Insured** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which the **Insured** becomes liable.

### 13.2 Claim

Shall mean the receipt by the **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 and served on an **Insured**; or
- b) any written or verbal demand from a third party claiming compensation against the **Insured**.

### 13.3 Claim investigation costs

The legal costs and expenses of investigating, defending or settling any:

- a) **Claim** or **Covered Claim**; or
- b) any 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 the **Insured** arising in the course of the conduct of the **Insured Business**,

which would be **Covered** by this **Policy** at the time the legal costs and expenses arise (refer Section 3.3).

### 13.4 Cover

The term '**Cover**' shall mean indemnity and indemnity shall not include any component of profit.

### 13.5 Covered claim

The term '**Covered Claim**' shall mean:

- a) **Claims**, liabilities, losses, costs; or
- b) circumstances which may give rise to a **Claim**, which **We** may agree to **Cover** under this **Policy**.

### 13.6 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 from any design or programming defect in any computer program or computer operating system.

### 13.7 Employee

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

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

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

### 13.8 Enquiry

Any legal or quasi legal enquiry including coronial enquiries (into a matter arising directly out of the provision of the **Health Care Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which the **Insured** is legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal 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).

### 13.9 Excess

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

### 13.10 Former principal

A person who has been, but is no longer:

- a) a **Principal** of an **Insured**; or
- b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously conducted the business which is now the **Health Care Services**.

### 13.11 Good samaritan acts

First aid voluntarily administered at the scene of any emergency, accident or disaster to persons, other than members of the **Insured's** family who reside with him/her.

### 13.12 Health care services

Shall mean any care, treatment, advice, service or goods in respect of the physical or mental health of any person, provided by or on behalf of the **Insured** in the course of the conduct of the **Insured Business**.

### 13.13 Insured

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the Schedule as an **Insured** and each current or **Former Principal** of any such firm or incorporated body; and
- b) any entity which is engaged in the provision of **Health Care Services** and which is created and controlled, while this **Policy** is in force, by anyone identified in the Schedule as an **Insured**; and
- c) anyone who becomes a **Principal** of the **Insured** while this **Policy** is in force (but only in respect of work undertaken for or on behalf of the **Insured** firm or incorporated body).

### 13.14 Insured business

Shall mean the '**Insured Business**' specified in the Schedule.

### 13.15 Intellectual property

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

### 13.16 Joint venture

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

### 13.17 Known circumstance

Any fact, situation or circumstance which:

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

For the purposes of this Section 13.17 only, '**Insured**' shall also mean any of the persons or entities specified in Sections 4.2 and/or 4.3 of the **Policy**.

### 13.18 Medical practitioners

'**Medical Practitioners**' refers to doctors (including locum doctors) who are medically qualified, including, but not limited to, anaesthesiologists, radiologists, pathologists, surgeons, cardiologists, and general practitioners.

### 13.19 Medicare Benefits Fraud

Means any dishonest, fraudulent, criminal or malicious acts or omissions which are intended to or have the effect of improperly obtaining money or other benefit from, or evading a liability to, and which involves or concerns, the Australian Government, Medicare, the Pharmaceutical Benefits Scheme and/or any government programs administered by Medicare Australia.

### 13.20 Policy

The insurance **Policy** made up of:

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

### 13.21 Policy limit

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

### 13.22 Pollutants

Shall mean 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.

### 13.23 Principal

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

### 13.24 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**.

### 13.25 Publicity campaign

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

### 13.26 Run-off event

Means an **Insured** entity ceasing to exist or operate, or being disposed of or merged with or acquired by another entity.

### 13.27 Specific cover

The **Cover** outlined in Sections 3.4, 3.5 and 3.12 of this **Policy**.

### 13.28 Specific cover limit

The limit of **Our** insurance **Cover** for the matter listed in the Schedule under 'Specific Cover Limit'. See Sections 3.4, 3.5 and 3.12 of this **Policy**.

### 13.29 Terrorism

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

- a) involves violence against one or more persons; or
- b) involves damage to property; or

- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

### 13.30 We or us or our

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

# Section 14

## 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](http://www.cgu.com.au/privacy). Alternatively, contact us at [privacy@cgu.com.au](mailto: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.





## Contact details

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Insurer  
**CGU Insurance Limited**  
ABN 27 004 478 371