

**civil liability
professional
indemnity**
insurance
policy



civil liability



Insurer
CGU Professional Risks Insurance,
a Division of CGU Insurance Limited
ABN 27 004 478 371
An IAG Company

Table of Contents

		Page
Section 1	How to read this Policy	1
Section 2	The Insurance contract	1
Section 3	The cover We provide	2
Section 4	Who is covered	3
Section 5	Limits to the amount cover	4
Section 6	What is not covered	4
Section 7	Investigation, defence and settlement of claims	6
Section 8	Special provisions for dishonesty and fraud	8
Section 9	Additional special provisions for Employment Practices Liability Cover	9
Section 10	Other matters	10
Section 11	Cancelling the Policy	10
Section 12	Words with special meanings	11
Section 13	The way we handle your personal information	13

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 12 of the **Policy** (“Words with special meanings”).

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 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. This information is part of the insurance contract with **Us**.
- 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 is not made, there is no cover.

Section 3

The cover we provide

3.1 The cover We provide

We indemnify the **Insured** up to the **Policy Limit** (see Section 5) for any **Civil Liability** to any third party, which is incurred by the **Insured** in the conduct of the **Insured Professional Business Practice** and which **Claims**:

- (a) are made against the **Insured** (or, those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force; and
- (b) **We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- (c) arise from an act, error or omission on or after the Retroactive Date specified in the Schedule; and
- (d) are one or more of the types of **Civil Liability Claim** described in Sections 3.2 and 3.3.

3.2 The Types Of Claim We Cover

We provide this cover in respect of any of the following types of **Civil Liability Claim** arising in the conduct of the **Insured Professional Business Practice**:

- (a) Breach of duty (including a duty of confidentiality).
- (b) Unintentional defamation.
- (c) Loss of or damage to **Documents** which were in the **Insured’s** physical custody or control at the time of loss or damage.
- (d) Dishonest, fraudulent, criminal or malicious acts or omissions by an **Employee** or **Principal** of the **Insured** (but there is no cover for the offending **Employee** or **Principal** for these Claims).
- (e) Unintentional infringement of any patent, copyright, design or trademark.
- (f) Unintentional breaches of the Trade Practices Act 1974 or corresponding sections of Fair Trading legislation enacted throughout Australia (but not for criminal liability).

3.3 Employment Practices Liability Cover

Notwithstanding Section 6.8, We cover the **Insured**, and each **Employee** (subject to the **Specific Cover Limit** set out in the Schedule for Employment Practices Cover, and the special provisions in Section 9 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:

- (i) Discrimination against any **Employee**, because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise.
- (ii) Wrongful dismissal of any **Employee**;
- (iii) Workplace harassment (whether sexual or otherwise) of an **Employee**.
- (iv) Breach of an implied term of an oral or written employment contract.
- (v) Wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Employee**.
- (vi) Wrongful refusal to employ a potential **Employee**.
- (vii) Defamation arising from employment-related matters.
- (viii) Misleading misrepresentation or advertising as to the terms and conditions of employment.
- (ix) Denial of natural justice to an **Employee** 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.

3.4 Claim Investigation Costs

We also pay in addition to the **Policy Limit** (but only 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 in **Our** view 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.

3.5 Disciplinary Proceedings/Enquiries

For those disciplinary 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** cover the **Insured** (subject to the **Specific Cover Limits** set out in the Schedule for Disciplinary Proceedings and Enquiries) for the following:

Cover is provided for legal costs and expenses (incurred with **Our** prior written approval and which in **Our** view are reasonable and necessary) for the representation of the **Insured** at any

Disciplinary Enquiry, or at a coronial enquiry. This cover does not extend to paying the **Insured's** regular or overtime wages, salaries or fees, or those of the **Insured's Employees**.

If no **Specific Cover Limit** is indicated in the **Schedule** for Disciplinary Proceedings/Enquiries, then no cover is provided by this **Policy** for Disciplinary Proceedings/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) **We** were the professional liability insurer of the **Insured** when the **Insured** first knew of such **Known Circumstance**; and
- (b) **We** continued without interruption to be the **Insured's** professional liability insurer up until this **Policy** came into effect; and
- (c) had **We** been notified by the **Insured** 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
- (d) Neither the **Claim** nor **Known Circumstance** have previously been notified to **Us** or to any other insurer.

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

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 (c) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

Section 4

Who is covered

4.1 Insured

We cover the **Insured** named in the Schedule (and as defined in Section 12 of the Policy) for **Claims** or losses and costs of the type and on the basis specified in Section 3, arising from the conduct of the **Insured Professional Business Practice** by or on behalf of the **Insured**.

The conduct of the **Insured Professional Business Practice** 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** while undertaking work which is reasonably incidental to the conduct by the **Insured** of the **Insured Professional Business Practice** 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 conduct of the **Insured Professional Business Practice** but not in respect of **Claims** or losses under section 3.2(d) of this **Policy**, (Dishonest, fraudulent, criminal or malicious acts or omissions by an **Employee** or **Principal**).

(b) 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 professional practice, disclosed in the proposal form, and whilst practising in the same professional discipline as the **Insured Professional Business Practice**.

(c) Prior Corporate entities

Corporate entities through which the **Insured** previously traded, in the course of the conduct of the **Insured Professional Business Practice**. 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.

(d) Mergers and Acquisitions

Entities (practising in the same professional discipline as the **Insured Professional Business Practice**) 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 or acquisition by the **Insured** unless **We** otherwise agree in writing.

We only provide cover to the persons, firms or incorporated bodies described in 4.2 above if the persons, firms or incorporated bodies claiming the coverage each agree in writing within a reasonable time of notification of the **Claim** or circumstance to **Us**:

- (a) to be bound by this **Policy**; and
- (b) 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**; and
- (c) to irrevocably consent to the solicitors instructed by **Us** to investigate any **Claim** and/or defend legal proceedings issued against any **Insured** communicating to **Us** all facts, matters, circumstances and documents. Each person or entity in providing their consent expressly waives legal professional privilege between the solicitors instructed by **Us** and each **Insured**.

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 be available to the **Insured**.

4.4 Joint Venture

If the name of a **Joint Venture** is included in the Schedule, under "Joint Ventures", then **We** cover the **Insured** for the **Insured's** individual and joint liability in respect of that **Joint Venture** as otherwise covered by this **Policy**. If the name of the **Joint Venture** is not included in the schedule under "Joint Ventures", then **We** cover the **Insured** only for the **Insured's** individual liability as otherwise covered by this **Policy** (and not for the **Insured's** joint liability).

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** covered by this **Policy**.

5.2 Reinstatement of the Policy Limit

The **Policy Limit** is the maximum amount **We** will indemnify the **Insured** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide indemnity 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 indemnity for an amount in the aggregate more than the **Specific Cover Limits** for losses under Section 3.5, Costs of Disciplinary Proceedings or Enquiries or for **Claims** under Section 3.3, Employment Practices Liability.
- (ii) In the aggregate, indemnity under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same acts, errors or omissions.
- (iii) If there is additional insurance in excess of the limit of this **Policy**, then indemnity 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**) which is not covered by the additional insurance.

(b) Limit of Cover for Claim Investigation Costs

Where indemnity 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 3.4 of this **Policy**. The aggregate amount we pay 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 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 settle the **Claim**. But **We** never pay more than the **Policy Limit**.

5.4 Limit if multiple persons insured

The **Policy Limit** does not increase if there is more than one person, firm or incorporated body insured under this **Policy**, or if more than one insured person 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 these **Specific Cover Limits** apply only to **Claims** under that **Specific Cover**. The **Policy Limit** itself still applies to all other **Claims** individually and to the total of all **Claims** added together (including **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

Where and to the extent that **We** are entitled to claim an Input Tax Credit for any payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make a payment of this kind shall be deemed to be net of **Our** entitlement to the Input Tax Credit.

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 monetary limit of the excess shall be deemed to be net of the entitlement of the **Insured** to the Input Tax Credit.

Section 6

What is not covered

We do not cover any of the following **Claims** (or losses):

6.1 Known Claims and Known Circumstances

- (a) **Known Claims** (or losses) as at the inception date of this **Policy**, or
- (b) **Claims** (or losses) arising from a **Known Circumstance(s)**, or
- (c) **Claims** (or losses) directly or indirectly based upon, attributable to, or in consequence of any such **Known Circumstance** or known **Claims** (or losses), or
- (d) **Claims** (or losses) disclosed in the **Proposal** form or arising from facts or circumstances disclosed in the **Proposal** form.

6.2 Foreign Courts

Claims:

- (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 judgment 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 loss covered by this **Policy**.

6.3 Assumed duty or obligation

Claims:

- (a) alleging a liability under a contractual warranty, guarantee or undertaking (unless 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 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 outside that which is normal in the course of the conduct of the **Insured Professional Business Practice**; or
- (e) arising from any business not conducted for or on behalf of the **Insured** firm or incorporated body.

6.4 Related parties

Claims:

- (a) against the **Insured** by or on behalf of:
 - (i) any person, firm or incorporated body covered by this **Policy**; or
 - (ii) any company or trust which is operated or controlled by the **Insured** or the **Insured's Employees**, nominees or trustees, and in which the **Insured** has a direct or indirect financial interest.
- (b) by or on behalf of the **Insured** and/or **Employee** against any person, firm or incorporated body covered by this **Policy**.

6.5 Refund of Professional Fees and Trading Debts

Claims:

- (a) for refund of professional fees or charges (by way of damages or otherwise); or

- (b) arising from a liability to pay trading debts, trade debts, or the repayment of any loan.

6.6 Profit

Loss or expense incurred by the **Insured** by or on behalf of the **Insured** (other than as covered by Sections 3.4 and 3.5 of this **Policy**) which is not a liability to a third party. In particular, there is no indemnity or cover under this **Policy** for any component for 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 Goods & Workmanship

Claims:

- (a) directly or indirectly arising from the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by or on behalf of the **Insured**; or
- (b) directly or indirectly arising from 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.

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

Claims:

- (a) Directly or indirectly based upon, attributable to or in consequence of the **Insured's** liability as an employer; or
- (b) 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.
- (c) (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
- (d) arising from occupation (or alleged occupation) of land or buildings by an Insured; or
- (e) 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.

6.9 Punitive & Exemplary Damages

Claims 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**.

6.10 Intentional damage

Claims 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.

6.11 Asbestos

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

6.12 Radioactivity & Nuclear Hazards

Claims 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.

6.13 War & Uprisings

Claims 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.

6.14 Terrorism

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

Further, there is no indemnity for any **Claim** arising from or related to any death, injury, illness, loss, damage, cost or expense of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**.

6.15 Date Recognition

Claim or liability arising in any way out of or in respect to any computer program, software products, computer data processing equipment or media, microchip, programmed logic controllers, integrated circuit or any electronic equipment that has been designed, specified, recommended, sold, supplied, installed, modified, maintained or used by or on behalf of the **Insured** which fails to:

- (i) correctly recognise any date as its true calendar date; or
- (ii) capture, save or retain and/or correctly manipulate, interpret or process any data, information, command or instruction as a result of treating any date otherwise than as its true calendar date; or
- (iii) capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into

any computer software being a command which causes a loss of data or the inability to capture, save, retain or correctly process such data on or after any date; or

- (iv) otherwise fails to correctly or effectively provide for the change of date between the Year 1999 and the Year 2000.

Further, there is no indemnity for or in respect of any **Claim** or liability arising from or in respect of any duty of the **Insured**, at any time, to have provided or acted upon a report or advice in respect of any issue related to Year 2000 conformity as defined in the Standards Australia/Standards New Zealand SAA/SNZ MP 77 document.

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 co-operation

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) Work out **Our** liability under this **Policy**.

7.3 We can protect our position

When **We** receive a notification of a **Claim**, or of a fact or circumstance which may give rise to a **Claim** which may be covered under this **Policy**, 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) jeopardise **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** to act on behalf of the **Insured** for any **Claim** (or **Covered Claim**) are at liberty to disclose to **Us** any information they receive in that capacity, wherever they obtain it from, including from the **Insured**. By claiming under this **Policy**, the **Insured** (and any person entitled to indemnity under this **Policy**) authorises such solicitors to disclose this information to **Us** and waives all claim to legal protectional privilege which might otherwise prevent those solicitors from disclosing 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 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** proceedings 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:
 - (i) the economics of the matter; and
 - (ii) the damages and costs likely to be recovered; and
 - (iii) the likely costs of defence; and
 - (iv) the **Insured's** prospects of successfully defending the claim.
- (c) The cost of Senior Counsel's opinion is to be taken as part of the **Claim Investigation Costs**.
- (d) If Senior Counsel advises that the matter should be settled and if the terms of the 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:
 - (i) the **Insured** cannot (subject to Section 7.7, **Insured's** right to contest) object to the settlement; and
 - (ii) the **Insured** must immediately pay the relevant **Excess** or **Excesses** 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**, is taken to be:

- (a) a payment to settle a **Claim**, and in addition,
- (b) a payment for the purpose of calculating the total of all **Claims** under this **Policy**.

7.10 Recovering money from Employees

We must not recover any amount paid out as a **Claim** or loss under this **Policy** from any **Employee** or former **Employee** of the **Insured** unless the **Claim** or loss arose from serious or wilful misconduct by the **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 for 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 upon the type of **Covered Claim** involved:
- (i) The **Insured** must pay the amount of **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 **Insured** must pay the amount of **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 this **Covered Claim**.
 - (iii) The **Insured** must pay the amount of **Excess** for costs of Disciplinary Enquiries specified in the Schedule when **We** provide cover for legal costs and expenses associated with a disciplinary proceeding or enquiry which **We** cover under Section 3.5 of this **Policy**.
 - (iv) The **Insured** must pay the amount of **Excess** for Employment Practices Liability specified in the Schedule when **We** provide cover for an Employment Practices Liability **Claim** which **We** cover under Section 3.3 of this **Policy**. The **Insured** must also pay this **Excess** when **We** provide cover for **Claim Investigation Costs** for this **Covered Claim**.
 - (v) The **Insured** must pay 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.
- (d) Where the excess is indicated in the **Policy** Schedule as "Costs Inclusive", the amount of the excess is the exclusive (ie. net) of any GST payable in respect of legal or similar investigation or defence costs.

7.13 GST Basis of Settlement

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.

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.

7.14 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**.

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

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

Section 8

Special provisions for dishonesty and fraud

8.1 When a **Claim**, under Section 3.2(d) only, (Dishonest or Fraudulent **Employees** or **Principals**) involves theft or misappropriation of money, then **We** only provide cover if:

- (a) the **Insured** 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 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 perform all the supervision, controls, checks and audits declared in the **Proposal**.
- 8.3** We deduct from any money We pay for a **Claim** or loss under Section 3.2(d):
- (a) the amount of any money which the **Insured** would have paid to the fraudulent, dishonest, criminal or malicious **Employee**, or **Principal** if they had not been fraudulent, dishonest, criminal or malicious; and
 - (b) the amount of any of that **Employee's**, or **Principal's** money which the **Insured** holds (if We can do so by law).
- 8.4** Notwithstanding Sections 3.2(d), there is no cover under this **Policy** for any **Claim** or loss directly or indirectly based upon, or attributed 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 such dishonest, fraudulent, criminal or malicious acts or omissions or any loss arising therefrom.

(i) 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;

(ii) 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;

(iii) 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;

(iv) Bodily Injury

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

(v) Physical Modifications to Premises

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

(vi) Unfair Contract Claims

- (a) **Claims** or proceedings for or in respect of a contract of employment alleged to be unfair;
- (b) 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 9

Additional special provisions for Employment Practices Liability cover

Loss

In relation to Section 3.3 Employment Practices Liability cover only, "**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.

Special Exclusions

In relation to Section 3.3 Employment Practices Liability cover only, We do not cover any of the following **Claims** (or Losses) or legal proceedings:

Section 10

Other matters

10.1 The Proposal

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**.

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**.

10.2 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 any person 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 losses covered by it.

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 Claims**; 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.

10.3 De-registration

The **Insured** must tell **Us** immediately in writing if an **Insured's** statutory registration, which is relevant to the conduct by the **Insured** of the **Insured Professional Business Practice**, is cancelled, suspended or terminated or has had conditions imposed during the Period of Insurance stated in the Schedule. **Claims** arising following such

cancellation, termination or suspension are excluded from indemnity under this **Policy**.

10.4 Singular & Plural

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

10.5 Payment in Australian dollars in Australia

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

10.6 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**.

10.7 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").

10.8 Schedule must be included

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

Section 11

Cancelling the Policy

11.1 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' plus an administration charge calculated at 12.5% of the pro-rata return premium, subject to a minimum administration charge of \$250. (Note: stamp duty for mid-term cancellation is not refundable in some states).

11.2 We can cancel the Policy

- (a) Under Section 60 of the Insurance Contracts Act 1984 **We** may cancel this **Policy** at any time, by giving notice in writing to the **Insured** of the date from which cancellation is to take effect where the **Insured** has:

- (i) failed to comply with the **Insured's** duty of utmost good faith; or
- (ii) failed to comply with the **Insured's** duty of disclosure at the time when this **Policy** was entered into, varied, altered or renewed; or
- (iii) made a misrepresentation to **Us** during the negotiations for this **Policy**, but before **We** agreed to issue this **Policy**; or
- (iv) failed to comply with a provision of the **Policy**; or
- (v) failed to pay the premium for this **Policy**; or
- (vi) made a fraudulent claim under this **Policy**, or any other contract of insurance (whether with **Us** or another insurer) that provided cover during any part of the Period of Insurance of this **Policy**; or
- (vii) failed to comply with a requirement in this **Policy** that the **Insured** notify **Us** of an act or omission which occurred after this **Policy** was entered into; or
- (viii) failed to notify **Us** of any specific act or omission or such notification as is required under the terms of this insurance **Policy**.

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.

(b) 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.

11.3 After cancellation, pursuant to Clause 11.2, **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 12

Words with special meanings

12.0 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.

12.1 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.

12.2 Claim

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**.

12.3 Claim Investigation Costs

The legal costs and expenses of investigating, defending or settling any **Claim** (or anything which might result in a **Claim**), which would be covered by this **Policy** at the time the legal costs and expenses arise (refer Section 3.4, **Claim Investigation Costs**).

12.4 Cover

Reference to 'cover' under this **Policy** shall mean indemnity and indemnity shall not include any component of profit.

12.5 Covered Claim

The term **Covered Claim** means the **Claims**, liabilities, losses, costs or circumstances which may give rise to a **Claim**, which **We** may agree to cover under this **Policy**.

12.6 Disciplinary Enquiry

Any legal or quasi legal process enquiring whether the **Insured** has breached any relevant professional code of conduct administered by any overseeing professional association.

12.7 Documents

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

12.8 Employee

A natural person who is not a **Principal**, but who:

- (a) has at any time entered into a contract of service with the **Insured** firm or incorporated body and is compensated for that service OR has at any time entered into a contract for services with the **Insured** and gains at least 90% of his or her income from the **Insured** during the period the **Policy** is in force; and
- (b) is, or was, at the time of the relevant act, error or omission giving rise to the **Claim** covered under this **Policy**, under the **Insured's** direct control and supervision in the course of the conduct of the **Insured Professional Business Practice**.

12.9 Excess

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

12.10 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 **Insured Professional Business Practice**.

12.11 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 **Insured Professional Business Practice** 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).

12.12 Insured Professional Business Practice

The business of provision by the **Insured** of the Professional Services stated in the Schedule.

12.13 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**.

12.14 Known Circumstance

Any fact, situation or circumstance which:

- (a) an **Insured** knew at any time before this **Policy** began; or
- (b) a reasonable person in the **Insured's** professional position would have thought, at any time before this **Policy** began

might result in someone making an allegation against an **Insured** in respect of a liability, that might be covered by this **Policy**.

12.15 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.
- (d) the information given to **Us** by or on behalf of the **Insured** in the **Proposal** and in any other way.

12.16 Policy Limit

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

12.17 Principal

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

12.18 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**.

12.19 Specific Cover

The cover outlined in Sections 3.3 and 3.5 of this **Policy**.

12.20 Specific Cover Limit(s)

The limit of **Our** insurance cover for each of the matters listed in the Schedule under "Specific Cover Limits". See Sections 3.3 and 3.5 of this **Policy**.

12.21 Terrorism

Terrorism, for the purposes of this **Policy** is defined as being 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, in fear.

12.22 We or Us or Our

CGU Professional Risks Insurance, a Division of CGU Insurance Limited ABN 27 004 478 371. An IAG Company.

Section 13

The way we handle your personal information

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

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

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

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

contact details

New South Wales Office

388 George Street
Sydney NSW 2000
PO Box H90 Australia Square
Sydney NSW 1215
Tel. (02) 8224 4655
Fax (02) 8224 4030

Queensland Branch

Level 12
189 Grey Street
South Bank QLD 4101
PO Box 1495
Milton QLD 4064
Tel. (07) 3135 1566
Fax (07) 3135 1564

Victorian Office

Level 4 CGU Centre
485 La Trobe Street
Melbourne VIC 3000
GPO Box 4609
Melbourne VIC 3001
DX 38206 Flagstaff
Tel. (03) 9601 8700
Fax (03) 9602 5255

Western Australia Branch

Level 3 The Insurance Centre
46 Colin Street
West Perth WA 6005
PO Box 7018 Cloisters Square
Perth WA 6850 DX 199 Perth
Tel. (08) 9254 3750
Fax (08) 9254 3751

South Australia Branch

Level 4 150 Grenfell Street
Adelaide SA 5000
GPO Box 9902 Adelaide SA 5000
DX 394 Adelaide
Tel. (08) 8425 6650
Fax (08) 8425 6592



Insurer

CGU Professional Risks Insurance,
a Division of CGU Insurance Limited
ABN 27 004 478 371
An IAG Company