



# Australian Traditional Medicine Society Professional Indemnity and Public and Products Liability Policy

# Combined Liability Package

Professional Indemnity Insurance Policy - 1  
Public and Products Liability Policy - 2

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## Important Information:

### The way We handle your personal information

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.

# Professional Indemnity Insurance Policy - 1

## 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'). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy** Schedule.

## 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.
- 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** in the conduct of the **Professional Services** 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 as stated in the Schedule.

### 3.2 The types of Claim 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** arising in the conduct of the **Professional Services**:

- a) breach of duty (including a duty of confidentiality, a breach of privacy or a breach of fiduciary duty).
- b) **Good Samaritan Acts**.
- c) unintentional defamation.
- d) loss of or damage to **Documents** which were in the **Insured's** physical custody or control at the time of loss or damage.
- e) dishonest, fraudulent, criminal or malicious acts or omissions or any breach of fiduciary duty by any person entitled to indemnity under this **Policy** (but there is no **Cover** to that person for these **Claims**).
- f) unintentional infringement of **Intellectual Property**.
- g) 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 in respect of any of these).
- h) breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the belief that appropriate authority was held.

### 3.3 Claim Investigation Costs

In respect of **Claims** or **Covered Claims**, **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.

### 3.4 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 Cover** the **Insured** and **Employees** of the **Insured** (subject to the terms of Section 4.2 of the **Policy**) for the following (subject to the **Specific Cover Limit** set out in the Schedule for 'Enquiries'):

**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 **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 'Enquiries', then no **Cover** is provided by this **Policy** for **Enquiries**.

### 3.5 Extended Continuous Cover

Notwithstanding Section 6.1 a), b), c) and e), **We Cover** the **Insured** for any **Claim** otherwise **Covered** by this **Policy**, arising from a **Known Circumstance**:

- a) if there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- b) where prior to the Period of Insurance stated in the Schedule, the **Insured** and/or those referred to in Sections 4.2 of the **Policy** first became aware of a fact, situation or circumstance which might give rise to a **Claim** but only:
  - i. during a period of insurance under a professional indemnity policy in which the **Insured** continued without interruption to be insured (whether with **Us** or any other previous insurer) by the **ATMS Scheme** up until the Period of Insurance specified in the Schedule; and
  - ii. if **We** (or the said previous insurer) had been notified by the **Insured** and/or those referred to in Sections 4.2 of the **Policy** 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
  - iii. if neither the **Claim** nor the **Known Circumstance** has not previously been notified to **Us** or to any other insurer.
- c) if the **Insured** still has an entitlement to indemnity, in whole or in part, under any other policy of insurance with any other insurer, then this Section 3.5 does not apply to provide **Cover** under this **Policy**.
- d) **Our** liability under this Section 3.5 is reduced to the extent of any prejudice **We** suffer as a result of any delayed notification to **Us** or the previous insurer.
- e) the **Policy Limit** of the **Cover We** provide under this Section 3.5 is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph b) i. above, or under this **Policy**.
- f) subject to paragraph e) above the terms of this **Policy** otherwise apply.
- g) entitlement to **Cover** under this Section 3.5 is conditional upon the receipt of all **Policy Documents** requested by **Us**.
- h) for the purposes of paragraph g) above, '**Policy Documents**' means:
  - i. the policy schedule;
  - ii. the policy wording;
  - iii. any endorsements attaching to i. and ii. above;
  - iv. issued to the **Insured** by (or on behalf of) any insurer for each professional indemnity policy in force from the time the **Insured** first became aware of a fact, situation or circumstance which might give rise to a **Claim** until this Period of Insurance stated in the Schedule; and
  - v. each professional indemnity proposal form submitted by the **Insured** in application for insurance for the periods of insurance referred to in paragraph h) iv. above.

### 3.6 Court Attendance Costs

For any person described in (a) and (b) below who actually attends court as a witness in connection with a **Claim** or **Covered Claim**, then it is agreed that **Claim Investigation Costs** will include the following rates per day of attendance in court is required to give evidence:

- i. Payable to any **Principal** or **Former Principal** - \$500
- ii. Payable to any **Employee** - \$250

No **Excess** shall apply to this Section 3.6.

### 3.7 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 3.7 from the **Insured** or others **Covered** by this **Policy**:

- i. if the **Insured** makes an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
- ii. in the event and to the extent that it is subsequently established by judgment or other final adjudication, that the **Insured** was not entitled to **Cover** under this **Policy**.

### 3.8 Compensatory Civil Penalties

Notwithstanding Section 6.10, **We Cover Claims** for compensatory civil penalties. **Our** total liability for the payment of compensatory civil penalties under the **Policy** shall not exceed \$250,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

However, **We** will not be liable to **Cover** the **Insured** for any compensatory civil penalty:

- a) for which **We** are legally prohibited at law from indemnifying the **Insured**;
- b) based upon, attributable to or in consequence of any:
  - i. wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - ii. gross negligence or recklessness; or
  - iii. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### 3.9 Run-off Cover for Insured until the end of the Policy period

In the event that a **Run-Off Event** occurs to an entity which is **Covered** by this **Policy** either before or during the Period of Insurance stated in the Schedule, 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**.

### 3.10 Teachers Liability

Subject to all other provisions of the **Policy**, **We** provide **Cover** for **Civil Liability Claims** arising out of any **Bodily Injury** of any student caused by any act, error or omission committed by an **Insured** as a teacher of the **Professional Services**.

However **We** do not provide **Cover** for any **Claims**, (or losses or liabilities) or any associated costs arising from any act error or omission committed by a student upon another student, unless the students were being supervised:

- a) by the **Insured**; or
- b) those referred to in Section 4.2 c) of this **Policy**, at the time such act, error or omission was alleged to have been committed.

### 3.11 Molestation Defence Costs

Notwithstanding Section 6.18, **We** will pay **Claims Investigation Costs** or **Criminal Prosecution Defence Costs** (which are in **Our** view reasonable and necessary) in investigating, defending or settling any **Claim, Enquiry** or criminal prosecution otherwise excluded from **Cover** by Section 6.18 provided that:

- a) **We** have not already denied **Cover** under the **Policy**;
- b) if **We** elect not to take over and conduct the investigation, defence or settlement of the **Claim, Enquiry** or criminal prosecution, **Our** written consent is obtained prior to the **Insured** incurring such **Claims Investigation Costs** (such consent not to be unreasonably delayed or withheld);
- c) The **Specific Cover Limit** for such **Claims Investigation Costs** and **Criminal Prosecution Costs** covered by this Section 3.11 shall not exceed \$250,000 in the aggregate;
- d) The **Excess** in respect to such:
  - i. **Claims Investigation Costs** is \$5,000 each and every **Claim** or **Enquiry**;
  - ii. **Criminal Prosecution Costs** is \$10,000 each and every criminal prosecution.
- e) There is no **Cover** under this Section 3.11 and **We** reserve the right to recover any such **Claims Investigation Costs** and **Criminal Prosecution Costs** from such **Insured**:
  - i. if the **Insured** makes an admission in writing of any of the conduct specified in Section 6.18; or
  - ii. in the event and to the extent that it is subsequently established directly or indirectly by judgment or other final adjudication, that the **Insured** has committed the conduct specified in Section 6.18.

For the purposes of this Section 3.11, '**Criminal Prosecution Costs**' means the legal costs and expenses of investigating, defending and/or settling any criminal prosecution against the **Insured**, which would be **Covered** by this **Policy** at the time the legal costs and expenses arise.

### 3.12 Fidelity Cover

- a) **We Cover** the **Insured** for any **Fidelity Loss** (see also Sections 8 and 9) where such **Fidelity Loss**:
  - i. is sustained by reason of any dishonest or fraudulent conduct of an **Employee** or **Student**;
  - ii. is first discovered by the **Insured** during the Period of Insurance;
  - iii. **We** are told about in writing as soon as reasonably practicable during the Period of Insurance; and
  - iv. is caused by dishonest or fraudulent conduct committed by an **Employee** or **Student** within a period of thirty six (36) months before being first discovered by the **Insured**;
- b) 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.
- c) **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 Run Off Cover- 84 Months

- a) If a **Run-Off Event** occurs during the Period of Insurance stated in the Schedule, the **Cover** provided by this **Policy** with respect to the **Insured** (and those referred to in Section 4.2 of the **Policy**) shall continue for a period of 12 months from the **Run-Off Event**, in respect of any **Claim** otherwise **Covered** by this **Policy** arising from any act, error or omission prior to the date of the **Run-Off Event**;
- b) Subject to point c) below, it is declared and agreed that where **We** remain the sole insurer under the **ATMS Scheme** the 12 month period referred to in point a) above is converted to a maximum period of 84 months from the **Run-Off Event**;
- c) If however **We** cease to be the sole insurer of the **ATMS Scheme**, at any time following the 12 month period specified in a) above, there will be no **Cover** for any **Claim** first made against the **Insured** (or any person or entity entitled to be **Covered** under this **Policy**) after **We** cease to be the sole insurer under the **ATMS Scheme**;
- d) All **Cover** under this Section 3.13 shall cease immediately if the **Policy** is cancelled;
- e) **Cover** under this Section 3.13 cannot be renewed or extended.

### 3.14 Hold Harmless Agreements

Notwithstanding Section 6.3 of the **Policy**, where, in the course of the provision of the **Professional Services** the **Insured** contracts with another party to carry out all or part of the **Professional Services** and such contract includes a **Hold Harmless Agreement**, then **Cover** under this **Policy** will not be derogated from solely by reason of the **Insurance** having agreed to such **Hold Harmless Agreement**.

### 3.15 Plate Glass

If the **Insured** is required under their lease to indemnify their landlord for the breakage of the plate glass window at the premises where the **Professional Services** are provided, then **We** agree to **Cover** the **Insured** for such breakage that occurs during the Period of Insurance stated in the Schedule, subject to a \$500 excess.

## 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 **Professional Services** by or on behalf of the **Insured**.

The conduct of the **Professional 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** while undertaking work which is reasonably incidental to the conduct by the **Insured** of the **Professional 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 conduct of the **Professional Services** but not in respect of **Claims** or losses under Section 3.2 d) of this **Policy**.

b) **Students**

**Students** under the direction, control and supervision of the **Insured** in respect of the conduct of the **Professional Services** for or on behalf of the **Insured**.

c) **Locums**

Locums employed or engaged by the **Insured** for the conduct of the **Professional Services** for or on behalf of the **Insured** while this **Policy** is in force in the capacity as a locum, for a maximum of:

- i. thirty days from the date the locum is employed or engaged; or
- ii. the length of a maternity leave replacement; or
- iii. until the Period of Insurance if that is sooner.

For the purposes of this **Policy**, locums do not include '**Medical Practitioners**', regardless of whether such **Medical Practitioners** are employed or engaged by the **Insured** or acting as a contractor of the **Insured** entity.

d) **Principal's 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**, (practicing in the same professional discipline as the **Insured**).

e) **Prior Corporate Entities**

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

f) **Mergers and Acquisitions**

Entities (practicing in the same professional discipline as the **Insured**) 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 Section 4.2 a) to f) 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 **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 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 **Cover** the **Insured** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide **Cover** to the **Policy Limit** for all **Claims Covered** by this **Policy**.

a) **Limits on reinstatement-** However:

- i. **We** do not provide **Cover** for an amount in the aggregate more than the **Specific Cover Limits** for losses under Section 3.4.
- 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 acts, errors or omissions.
- iii. if there is extra insurance in excess of the limit of this **Policy**, then **Cover** in excess of one **Policy Limit** is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance.

b) **Limit of Cover for Claim Investigation Costs**

Where **Covered** 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**.

**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 insured

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 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

- 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 deemed to 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 monetary limit of the **Excess** shall be deemed to 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 provide **Cover** for any of the following **Claims**, (or losses or liabilities) or any associated costs:

#### 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**; 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** or arising from facts or circumstances disclosed in the **Proposal**; or
- e) if the **Policy** is endorsed or amended mid term, for any **Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that that **Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

#### 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 which is more onerous than that which the **Insured** would otherwise have in providing at common law, in the course of the conduct of the **Professional Services**; 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** brought by or on behalf of:
  - i. any of the persons or parties 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 **Insured** and/or any person or entity entitled to be **Covered** under this **Policy**, against any person or entity entitled to be **Covered** by this **Policy**.

### 6.5 Refund of Professional Fees and Trading Debts

#### Claims:

- a) for the refund of professional fees or charges (by way of damages or otherwise); or
- 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; or
- c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) arising from a liability to pay trading debts, trade debts or the repayment of any loan.

### 6.6 Profit

Loss or expense incurred by or on behalf of the **Insured** (other than as **Covered** by Sections 3.3 and 3.4 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

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

### 6.8 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**.
- c) However a) and b) above do not apply to any **Claims** or **Covered Claims**, which arise solely from:
  - i. any defect or deficiency in any direction or advice provided on behalf of the **Insured** in connection with goods or products manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the **Insured**; and/or
  - ii. a failure on the part of the **Insured** to warn of the risks associated with the use of a good or product manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the **Insured**, where such good or product is not defective but the user of such good or product experiences an adverse reaction to it.

- 6.9 Employers' Liability, Directors' & Officers' Liability, Occupier's 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 from bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under the direction, control and/or supervision of the Insured or for whose workplace safety the **Insured** is responsible; 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; or
  - 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.
- 6.10 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**.
- 6.11 Intentional Damage**
- a) **Claims** arising from acts, errors or omissions by the **Insured** or any person entitled to **Cover** under this **Policy** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences; or
  - b) any wilful breach of any statute, contract or duty by an **Insured** or any person entitled to **Cover** under this **Policy**.
- 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 **Professional Services**, **Claims** arising from acts, errors or omissions by or of behalf of the **Insured** subsequent to the cancellation or suspension of such statutory registration.
- 6.13 Asbestos**  
**Claims** which would not have arisen but for the existence of asbestos.
- 6.14 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.
- 6.15 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.
- 6.16 Terrorism**  
**Claims** directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:
- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
  - b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.
- 6.17 Pollution**  
**Claims** 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 Sexual Misconduct**  
**Claims** 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.

### 6.19 **Medical Instruments Claim**

**Claim** directly or indirectly arising from, related to, based upon, attributable to or in consequence of the reuse of hypodermic needles.

### 6.20 **Medical Practitioners**

arising directly or indirectly from any act, error or omission of any **Medical Practitioner** whether such **Medical Practitioner** is or was employed by the **Insured** or is acting or acted as a contractor of the **Insured**.

### 6.21 **Instrument Use**

directly or indirectly related to, based upon, attributable to or in consequence of:

- a) the reuse of hypodermic needles,
- b) the failure of the **Insured** to sterilise in an approved autoclave before reuse, any other instrumentation, which is in contact with, or penetrates human tissue,
- c) failure of the **Insured** to promptly and thoroughly clean any surface which has received a spillage of human bodily fluid.

## 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 **Cover** under this **Policy**) authorises such solicitors to disclose this information to **Us** and waives all claim to legal professional privilege which might otherwise prevent those solicitors from disclosing this information to **Us**.

### 7.5 **We can manage the Claim (or Covered Claim) 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 having regard to (including but not limited to) the:
    - 1. damages and costs likely to be recovered; and
    - 2. likely costs of defence; and
  - ii. 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 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) 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 dishonest, fraudulent, criminal or malicious acts or omissions of the **Employee** or former **Employee**.

#### 7.11 Offsetting of costs & expenses the Insured owes Us against what We owe the 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 on the type of **Covered Claim** involved:
  - i. the **Insured** must pay 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 **Insured** must pay 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 this **Covered Claim**.
  - iii. the **Insured** must pay the amount of **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 3.4 of this **Policy**.
  - iv. 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 exclusive (ie. net) of any GST payable in respect of legal or similar investigation or defence costs.

#### 7.13 Loss Prevention

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

#### 7.15 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 the **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 perform all the supervision, controls, checks and audits reasonably practical 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 entitled to **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
  - the amount of any money of the person referred to in paragraph a) above which the **Insured** holds (if **We** can do so by law).
- 8.4 Notwithstanding Section 3.2 e) and **Fidelity Loss** under Section 3.12, there is no **Cover** under this **Policy** to any person to any person entitled to indemnity under this **Policy**, entitled to indemnity 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 the **Insured** or that person 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.
- 8.5 There is no **Cover** under this **Policy** for any **Claim** or loss arising from or related to any dishonest, fraudulent, criminal, malicious acts, errors or omissions or breach of fiduciary duty other than pursuant to Section 3.2 e) and **Fidelity Loss** under Section 3.12 of this **Policy**.

## Section 9 - Special Provisions for Fidelity

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.
  - Fidelity Loss** the existence of which has only been established by profit and loss figures or by inventory calculations (including stock-takes).
  - costs incurred by the **Insured** in re-writing, amending or re-installing the **Insured's** computer programs or systems.
  - consequential loss arising from any dishonest or fraudulent acts or omissions of any **Employee**.
  - Fidelity Loss** caused by or contributed to by an **Employee** who was not employed by the **Insured** when the act or omission which caused or contributed to the loss occurred.
  - Fidelity Loss** caused by or contributed to by **Principals** or **Former Principals**.
  - loss arising from default under a loan or any type of credit offered to or by the **Insured**.
  - 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.

- i) **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.
- j) **Fidelity Loss** first discovered prior to the commencement of the Period of Insurance or first discovered after the expiration of the Period of Insurance.
- k) **Fidelity Loss** arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission by any shareholder who at the time of committing such acts had direct or indirect ownership of or control over five per cent or more of the voting share capital of the **Insured**.
- l) **Fidelity Loss** arising directly or indirectly from the voluntary giving or surrendering of money, negotiable instruments, bearer bonds or coupons, stamps bank or currency notes unless such loss is sustained by reason of any dishonest or fraudulent act or omission of any **Employee**.
- m) loss arising directly or indirectly from the dissemination of or accessing any confidential information including but not limited to patents, trademarks, copyrights, trade secrets, computer programs, or customer information.
- n) loss arising directly or indirectly from any kidnap, ransom or extortion.

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

- a) means direct financial loss suffered by the **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 - 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
- b) 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 **Professional Services**, is cancelled, suspended or terminated or has had conditions imposed during the Period of Insurance stated in the Schedule.

### 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.

#### 10.9 **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 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' 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).

#### 11.2 **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 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.

11.3 After cancellation pursuant to Section 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

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

#### 12.2 **ATMS Scheme**

The professional indemnity insurance scheme arranged by an insurance broker endorsed by the Australian Traditional Medicine Society Ltd.

#### 12.3 **Civil Liability**

Liability for the compensatory 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.

#### 12.4 Claim

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 or verbal demand from a third party claiming compensation against the **Insured**.

#### 12.5 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**.)

#### 12.6 Cover

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

#### 12.7 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**.

#### 12.8 Documents

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

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

#### 12.9 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) has at any time 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 a party who 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; and in respect of both a) and b) above under the **Insured's** direction, control and supervision in the conduct of the **Professional Services**.

#### 12.10 Enquiry

Any legal or quasi legal enquiry (into a matter arising directly out of the conduct of the **Professional 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).

#### 12.11 Excess

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

#### 12.12 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 **Professional Services**.

#### 12.13 Good Samaritan Acts

Medical assistance 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.

#### 12.14 **Hold Harmless Agreement**

Mutual obligations between the **Insured** and the other contracting party to:

- a) hold each other harmless against; and/or
- b) indemnify each other against; and/or
- c) release each other from,  
any liability for any loss or damage in connection with the **Professional Services**.

#### 12.15 **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 **Professional 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).

#### 12.16 **Intellectual Property**

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

#### 12.17 **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**.

#### 12.18 **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, at any time 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**.

#### 12.19 **Medical Practitioner**

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

#### 12.20 **Policy**

The insurance **Policy** made up of:

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

#### 12.21 **Policy Limit**

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

#### 12.22 **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.

#### 12.23 **Principal**

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

#### 12.24 **Professional Services**

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

#### 12.25 **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**.

#### 12.26 **Run-Off Event**

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

**12.27 Specific Cover**

The **Cover** outlined in Section 3.4 of this **Policy**.

**12.28 Specific Cover Limit(s)**

The limit of **Our** insurance **Cover** for each of the matters listed in the Schedule under '**Specific Cover Limits**'. See Section 3.4 of this **Policy**.

**12.29 Students**

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

**12.30 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.

**12.31 We or Us or Our**

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

# Public and Products Liability Policy - 2

## 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 8 of the **Policy** ("Words with special meanings"). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy Schedule**.

## 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** 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**.
- 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** will pay to or on behalf of the **Insured** all sums provided by the **Policy** which the **Insured** shall become legally liable to pay as compensation for **Personal Injury** or **Property Damage** occurring within the Geographical Limits as stated within Section 5.1 of the **Policy** caused by an **Occurrence** happening in connection with the **Business** of the **Insured** and which claims:

- a) are made against the **Insured** during the **Period of Insurance**, and
- b) are advised to **Us** in writing as soon as reasonably possible during the **Period of Insurance**, and
- c) arise from an **Occurrence** on or after the Retroactive Date specified in the Schedule for Professional Indemnity Insurance Policy - 1.

### 3.2 Limit of Liability

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

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

### 3.3 Extended Continuous Cover

Notwithstanding Section 6.1 a), b), c) and e), **We** cover the **Insured** for any claim otherwise covered by this **Policy**, arising from a **Known Circumstance**:

- a) if there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- b) where prior to the **Period Of Insurance**, the **Insured** and/or those referred to in Sections 4.2 of the **Policy** first became aware of a fact, situation or circumstance which might give rise to a claim but only:
  - i. during a period of insurance under a professional indemnity policy in which the **Insured** continued without interruption to be insured (whether with **Us** or any other previous insurer) by the **ATMS Scheme** up until this **Period Of Insurance**; and
  - ii. if **We** (or the said previous insurer) had been notified by the **Insured** and/or those referred to in Sections 4.2 of the **Policy** 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
  - iii. if neither the claim nor the **Known Circumstance** has not previously been notified to **Us** or to any other insurer.

- c) if the **Insured** still has an entitlement to indemnity, in whole or in part, under any other policy of insurance with any other insurer, then this Section 3.3 does not apply to provide cover under this **Policy**.
- d) **Our** liability under this Section 3.3 is reduced to the extent of any prejudice **We** suffer as a result of any delayed notification to **Us** or the previous insurer.
- e) the **Policy Limit** of the cover **We** provide under this Section 3.3 is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph b) i. above, or under this **Policy**.
- f) subject to paragraph e) above the terms of this **Policy** otherwise apply.
- g) entitlement to cover under this Section 3.3 is conditional upon the receipt of all **Policy Documents** requested by **Us**.
- h) for the purposes of paragraph g) above, '**Policy Documents**' means:
  - i. the policy schedule;
  - ii. the policy wording;
  - iii. any endorsements attaching to i. and ii. above;
  - iv. issued to the **Insured** by (or on behalf of) any insurer for each professional indemnity policy in force from the time the **Insured** first became aware of a fact, situation or circumstance which might give rise to a claim until this **Period Of Insurance**; and
  - v. each professional indemnity proposal form submitted by the **Insured** in application for insurance for the periods of insurance referred to in paragraph h) iv. above.

### 3.4 Run Off Cover- 84 Months

- a) If a **Run-Off Event** occurs during the **Period of Insurance**, the cover provided by this **Policy** with respect to the **Insured** shall continue for a period of 12 months from the **Run-Off Event**, in respect of any claim otherwise covered by this **Policy** arising from any **Occurrence** prior to the date of the **Run-Off Event**;
- b) Subject to point c) below, it is declared and agreed that where **We** remain the sole insurer under the **ATMS Scheme** the 12 month period referred to in point a) above is converted to a maximum period of 84 months from the **Run-Off Event**;
- c) If however **We** cease to be the sole insurer of the **ATMS Scheme**, at any time following the 12 month period specified in a) above, there will be no cover for any claim first made against the **Insured** (or any person or entity entitled to be covered under this **Policy**) after **We** cease to be the sole insurer under the **ATMS Scheme**;
- d) All cover under this Section 3.4 shall cease immediately if the **Policy** is cancelled;
- e) cover under this Section 3.4 cannot be renewed or extended.

## Section 4 - Supplementary Payments

### 4.1 With respect to the indemnity provided by this policy **We** will:

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

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

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

## Section 5 - Geographical Limits

- 5.1 This **Policy** applies in respect of **Occurrences** in Australia and/or New Zealand (or any territories which come within their jurisdiction) only.

## Section 6 - What is not covered

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

### 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**; 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** or arising from facts or circumstances disclosed in the **Proposal**; or
- e) if the **Policy** is endorsed or amended mid term, for any **Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that that **Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

### 6.2 Employer's Liability

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

### 6.3 Motor Vehicles

Liability to pay compensation for **Personal Injury** or **Property Damage** arising out of the ownership, possession, operation or use by the **Insured** of any **Vehicle**:

- a) which is registered or which is required under any legislation to be registered; or
- b) in respect of which compulsory liability or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected); and
- c) provided that exclusions 6.3 a) and b) above do not apply to **Personal Injury** where:
  - i. that compulsory liability insurance or statutory indemnity does not provide indemnity;
  - ii. the reasons or reasons why that compulsory liability or statutory indemnity does not provide indemnity does not involve a breach by the **Insured** of legislation relating to vehicles; and
  - iii. **Vehicles** whilst being operated or used by the **Insured** as a **Tool of Trade**.

#### 6.4 Aircraft and Watercraft

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

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

#### 6.5 Property in Physical or Legal Control

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

- a) property owned by or leased or rented to the **Insured**; or
- b) property in the physical or legal control of the **Insured**.
- c) Provided that exclusions 6.5 a) and b) above shall not apply to liability for **Property Damage** to:
  - i. personal property of any director, executive officer, employee, partner or visitor of the **Insured**;
  - ii. premises (including landlord's fixtures, fittings and contents) which are leased or rented by the **Insured** for the purpose of the **Insured's Business**;
  - iii. premises (including landlord's fixtures, fittings and contents) temporarily occupied by the **Insured** for the purposes of carrying out work in connection with the **Business**;
  - iv. vehicles (not belonging to or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such property damage occurs whilst any such vehicle is in a car park owned or operated by the **Insured** provided that the **Insured** does not operate the car park for reward;
  - v. any property temporarily in the **Insured's** physical or legal control provided no indemnity is granted for damage to that part of any property upon which the **Insured** is or has been working on and **Our** liability under this clause does not exceed \$100,000 (or any other amount if specified in the **Schedule**) for any one **Occurrence**.
- d) Notwithstanding 6.5 a) to c) above, no cover is provided under this **Policy** in respect to liability assumed by the **Insured** under any contract or agreement which requires the **Insured** to effect material damage insurance on premises, property or goods which the **Insured** does not own.

#### 6.6 Faulty Workmanship

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

#### 6.7 Damage to Insured's Products

Liability to pay compensation for:

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

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

#### 6.8 Product Recall and Repair

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

#### 6.9 Aircraft Products

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

#### 6.10 Contractual Liability

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

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

#### 6.11 Professional Liability

Liability to pay compensation for:

- a) the rendering of or failure to render professional advice or service by the **Insured** or error or omission connected therewith;
- b) medical malpractice;
- c) breach of professional duty as a director or officer.

#### 6.12 Libel and Slander

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

- a) made prior to the **Period of Insurance**; or
- b) made at the direction of the **Insured** with the knowledge of the falsity thereof; or
- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of the **Insured**.

#### 6.13 Fines and Punitive Damages

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

#### 6.14 Pollution

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

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

#### 6.15 Asbestos

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

#### 6.16 Nuclear

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

#### 6.17 War

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

#### 6.18 Terrorism

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

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

#### 6.19 Electronic Data

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

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

## 6.20 Sexual Misconduct

Liability to pay compensation for **Personal Injury** or **Property Damage** arising directly or indirectly out of, or in any way involving molestation of, interference with, bullying of, mental abuse of or physical abuse of any person.

# Section 7 - Other Matters

## 7.1 Claims Control

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

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

## 7.2 Discharge of Liabilities

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

## 7.3 Reasonable Care

The **Insured** shall:

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

## 7.4 Cross Liabilities

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

## 7.5 Alteration of Risk

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

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

## 7.6 Subrogation

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

## 7.7 Other Insurances

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

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

## 7.8 Insurance Arranged By Principal

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

## 7.9 Cancellation

- a) The **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);
- b) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to the **Insured** of the date from which cancellation is to take effect;
- c) **We** may deliver this notice to the **Insured** personally, or post it by certified mail (to the **Insured's** broker or to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice;
- d) 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.
  - iii. After cancellation pursuant to paragraph b) above, **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**.
- e) When the premium is subject to adjustment, cancellation will not affect the **Insured's** obligation to supply such information as **We** may require for the adjustment of the premium. Cancellation will not affect the **Insured's** obligations to pay the amount of adjustment applicable up to the date of cancellation.

#### 7.10 **Inspection and Premium Adjustment**

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

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

#### 7.11 **Insurance Contracts Act**

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

#### 7.12 **Agreement Limiting Rights**

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

#### 7.13 **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.

#### 7.14 **Australian Jurisdiction**

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

#### 7.15 **Goods and Services Tax**

Where **We** make a payment under this **Policy** for the acquisition of goods, services or other supply **We** will reduce the amount of the payment by the amount of any Input Tax Credit the **Insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where **We** make a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of payment by the amount of any Input Tax Credit that the **Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

## Section 8 - Words with special meaning

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

#### 8.2 **ATMS Scheme**

The professional indemnity insurance scheme arranged by an insurance broker endorsed by the Australian Traditional Medicine Society Ltd.

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

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

- 8.5 Excess** means the amount payable by the **Insured** in respect to each **Occurrence** and includes all **Supplementary Payments**.
- 8.6 Insured**  
Each of the following is insured under this **Policy** to the extent set forth below:
- a) The **Named Insured**;
  - b) All subsidiary companies (now or hereafter constituted) of the **Named Insured** whose place of incorporation is within Australia and whose business falls within the definition of **Business**;
  - c) Any director, executive officer, employee, partner or shareholder of the **Named Insured** or of any company designated in paragraph b) above but only while acting within the scope of their duties in such capacity;
  - d) Any party with whom the **Named Insured** (or any company designated in paragraph b) above) has entered into an agreement for the purpose of the **Business**, but only for **Occurrences** for which the **Named Insured** above would be liable in the absence of the agreement and only to the extent that the agreement requires the **Named Insured** to indemnify that party in relation to the **Occurrence**;
  - e) any incorporated or unincorporated association or organisation including their office bearers and members organised by the **Insured** (other than an **Insured** designated in paragraph d) above) or their employees with the consent of the **Insured** for the purpose of providing canteen, social, sports, welfare and or child care organisations or first aid, medical, fire or ambulance services for such employees.
- 8.7 Insured's Products** means anything, including any packaging or container thereof (after it has ceased to be in the possession or control of the **Insured**) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the **Insured**.
- 8.8 Internet Operations** means the following:
- a) Use of electronic mail systems by the **Insured's** employees, including part-time and temporary staff, and others within the **Insured's** organisation;
  - b) Access through the **Insured's** network to the world wide web or a public internet site by the **Insured's** employees, including part-time and temporary staff, and others within the **Insured's** organisation;
  - c) Access to the **Insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web for the **Insured's** customers or other outside the **Insured's** organisation; and
  - d) The operation and maintenance of the **Insured's** web site.
- 8.9 Known Circumstance** means 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, at any time 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**.
- 8.10 Medical Persons** means medical doctors, medical nurses, dentists and first aid attendants.
- 8.11 Named Insured** means the entity or natural person specified in the **Schedule**.
- 8.12 Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions, which causes **Personal Injury** or **Property Damage** none of which is expected or intended from the standpoint of the **Insured**.
- 8.13 Period of Insurance** means the duration of this **Policy** as stated in the **Schedule** incorporated into the **Policy**.
- 8.14 Personal Injury means:**
- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
  - b) false arrest, false imprisonment, malicious prosecution and humiliation;
  - c) libel, slander, defamation of character;
  - d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
  - e) assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property.

- 8.15 Policy Limit** means the amount(s) specified as such in the **Schedule**.
- 8.16** 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**.
- 8.17 Products Liability** means **Personal Injury** or **Property Damage**: caused by any defect, or the harmful nature of any of the **Insured's Products**;
- 8.18 Property Damage means:**
- a) physical injury to or destruction or loss of tangible property and any loss of use of that property resulting therefrom; or
  - b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property.
- 8.19 Proposal**  
The written **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.
- 8.20 Public Liability** means liability covered by this **Policy** but does not include **Products Liability**.
- 8.21 Schedule** means new **Policy** schedule, renewal schedule or endorsement schedule issued by **Us**.
- 8.22 Terrorism** means an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, to fear.
- 8.23 Tool of Trade** means any vehicle which has a tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:
- a) Vehicles whilst in transit to or from any worksite; or
  - b) Vehicles used for transport or haulage.
- 8.24 Vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.
- 8.25 Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through or under water.
- 8.26 We or Us or Our**  
CGU Professional Risks, CGU Insurance Limited ABN 27 004 478 371.